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Monday
March 1, 1999

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WASHINGTON, DC

WHEN: March 23, 1999 at 9:00 am.

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RESERVATIONS: 202–523–4538

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH60

Prevailing Rate Systems; Abolishment of the Marion, Indiana, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Marion, Indiana, nonappropriated fund Federal Wage System wage area and redefine its six counties as areas of application to nearby nonappropriated fund wage areas for pay-setting purposes. This change is being made because the closure of Fort Benjamin Harrison left the Department of Defense without an activity in the wage area capable of hosting local wage surveys.

DATES: This regulation is effective on March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On September 10, 1996, the Office of Personnel Management (OPM) published an interim rule (61 FR 47661) to abolish the Marion, IN, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its six counties having continuing FWS employment. The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by majority vote that we abolish the Marion, IN, NAF wage area and redefine its six counties as areas of application to nearby NAF wage areas. Marion County, Grant County, Miami County, and Allen County, IN, were redefined to the Greene-Montgomery, Ohio, NAF wage area. Martin County, IN, was redefined to the Hardin-Jefferson, Kentucky, NAF wage area, and Vermilion County, Illinois, was redefined to the Lake, IL, NAF wage area. This change was necessary due to the closure of the Marion wage area's host activity, Fort Benjamin Harrison, which left the wage area without an activity having the capability to conduct annual local wage surveys.

Employees being paid rates from the Marion, IN, NAF wage schedule were converted to new wage schedules on December 10, 1996. OPM published an interim rule making this change and provided a 30-day public comment period. During this period, OPM did not receive any comments. Based on the previous recommendation of FPRAC, the interim rule is being adopted as a final rule without any changes.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (61 FR 47661) amending 5 CFR part 532 published on September 10, 1996, is adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–5003 Filed 2–26–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI10

Prevailing Rate Systems; Removal of Umatilla County, Oregon, from the Spokane, Washington, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to remove Umatilla County, Oregon, from the Spokane, Washington, nonappropriated fund Federal Wage System wage area because nonappropriated fund Federal Wage System employees are no longer stationed in Umatilla County, and no Federal agency anticipates such future employment in the county.

DATES: This regulation is effective on March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On December 23, 1997, the Office of Personnel Management (OPM) published an interim rule (62 FR 66973) to remove Umatilla County, Oregon, from the Spokane, Washington, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. The change was made effective on January 1, 1998. The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we remove Umatilla County, OR, from the Spokane, WA, FWS wage area. The Spokane wage area is composed of one survey county, Spokane County, and three area of application counties, Adams County, WA, Walla Walla County, WA, and Umatilla County, OR. The removal of Umatilla County is appropriate because there are no NAF FWS employees stationed in the county, and no Federal agency anticipates future NAF employment. According to section 5343(a)(1)(B)(i) of title 5, United States Code, NAF wage areas ''shall not extend

beyond the immediate locality in which the particular prevailing rate employees are employed.''

On January 1, 1998, the minimum wage for the state of Oregon increased to $6.00 per hour. Under section 532.205 of title 5, Code of Federal Regulations, the highest mimimum wage applicable within a wage area must be applied to the entire wage area. Pay rates for NAF FWS employees stationed in Adams, Spokane, and Walla Walla Counties, WA, would have been increased to the higher minimum wage amount for the state of Oregon even though there are no NAF FWS employees working in Umatilla County, OR. OPM published an interim rule making this change and provided a 30-day public comment period. During this period, OPM did not receive any comments. Based on the previous recommendation of FPRAC, the interim rule is being adopted as a final rule without any changes.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (62 FR 66973) amending 5 CFR part 532 published on December 23, 1997, is adopted as final with no changes.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–5004 Filed 2–26–99; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH58

Prevailing Rate Systems; Abolishment of the Norfolk, Massachusetts, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Norfolk, Massachusetts, nonappropriated fund Federal Wage System wage area and redefine its five counties as areas of application to nearby wage areas for pay-setting purposes. This change is being made because the closure of the Naval Air Station at South Weymouth, MA, left the Department of Defense without an activity in the wage area capable of hosting local wage surveys.

DATE: This regulation is effective on March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On September 23, 1996, the Office of Personnel Management (OPM) published an interim rule (61 FR 49649) to abolish the Norfolk, MA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine its five counties having continuing FWS employment. The Federal Prevailing Rate Advisory Committee, the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by majority vote that we abolish the Norfolk, MA, NAF wage area and redefine its five counties as areas of application to nearby NAF wage areas. Norfolk County, Plymouth County, and Suffolk County, MA, were redefined to the Middlesex, MA, NAF wage area. Barnstable County and Nantucket County, MA, were redefined to the Newport, Rhode Island, NAF wage area. This change was necessary due to the closure of the Norfolk wage area's host activity, the Naval Air Station South Weymouth, which left the wage area without an activity having the capability to conduct annual local wage surveys.

Employees being paid rates from the Norfolk, MA, NAF wage schedule were converted to new wage schedules on November 15, 1996. No permanent employee's wage rate was reduced as a result of this change. The interim rule provided a 30-day period for public comment, during which we did not receive any comments. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (61 FR 49649) amending 5 CFR part 532 published on September 23, 1996, is adopted as final with no changes.

Office of Personnel Management,

Janice R. Lachance,

Director.

[FR Doc. 99–5005 Filed 2–26–99; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–254–AD; Amendment 39–11051; AD 99–05–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires a one-time detailed visual inspection of the outboard sequence carriage attachment fitting for the presence and condition of a shim and any loose fastener, and follow-on corrective actions, if necessary. This amendment is prompted by a report that a piece of the left wing inboard foreflap came off during a landing approach and struck and penetrated the airplane fuselage. The actions specified by this AD are intended to prevent the failure of the outboard sequence carriage fitting, which could allow the wing inboard foreflap to separate and penetrate the fuselage, possibly injuring passengers and crewmembers.

DATES: Effective April 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on April 15, 1998 (63 FR 18341). That action proposed to require a one-time detailed visual inspection of the outboard sequence carriage attachment fitting for the presence and condition of a shim, and follow-on corrective actions, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Issuance of Proposed Rule Is Unwarranted

One commenter considers that issuance of the proposed rule is unwarranted. The commenter states that the reason for the inspection of the outboard foreflap fitting is because an overhauled flap did not have a shim installed, which caused the foreflap to break apart during landing approach. The commenter also states that this condition caused damage to the aircraft fuselage, and a slight roll during flight, but no noticeable changes to the flight characteristics. The commenter points out that, although it is performing the inspections in accordance with Boeing Alert Service Bulletin 747–57A2302, dated April 10, 1997, it does not agree that the inspection should be mandated for several reasons.

First, the 747 Component Maintenance Manual (CMM) 57–52–31 clearly includes procedures for installation of the shim, which specify that the gap is not to exceed 0.003 inch. Second, although it appears that CMM procedures were not followed by the overhaul facility during overhaul of the foreflap that broke apart in flight, this is no reason to require all operators to perform the inspection. The commenter adds that, although individual operators occasionally make errors in approved maintenance procedures that require an operator to inspect its fleet for conformity to type certification, the FAA does not then require all operators to accomplish the same inspections as those of one errant operator. In addition, neither the alert service bulletin nor the NPRM provides any reason to believe that another operator or overhaul facility would have made the same error.

The FAA does not concur that issuance of the proposed rule is unwarranted. The FAA has considered not only that the condition (excessive gap) may exist on other airplanes of the same type design, but also the consequences of this type of maintenance error. In addition, the FAA has determined that exceeding the specified gap (0.003 inch) on an installed fitting could result in puncturing the fuselage skin (adjacent to passenger seats) and injuring passengers and crewmembers. In light of this, the FAA considers that the actions required by this AD are necessary and that issuance of this final rule will ensure an adequate level of safety for the affected fleet.

Request To Correct the Applicability

One commenter [the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom], points out a contradiction in the proposed AD regarding the number of airplanes affected. The CAA states that the cost impact information of the proposal indicates that approximately 1,147 airplanes are affected, whereas the applicability of the proposal refers to line numbers 1 through 1,122 inclusive.

Another commenter states that the line number effectivity should be 1 through 1,116, and that this change is included in Boeing Service Bulletin 747–57A2302, Revision 1, dated June 18, 1998. The commenter also reports that line numbers 1,117 through 1,122 were inspected at the manufacturer's facility prior to delivery.

The FAA concurs with the commenters' requests to correct the applicability of this AD. The FAA has determined that it is appropriate to exclude those airplanes (line numbers 1,117 through 1,122) that have been inspected prior to delivery, and has confirmed that the effectivity of Revision 1 of the service bulletin includes line numbers 1 through 1,116. The FAA has determined that there are 991 airplanes of the affected design in the worldwide fleet and 213 airplanes of U.S. registry that are affected by this AD. The cost impact information, below, has been revised accordingly. In addition, the FAA has revised the applicability of the final rule to indicate line numbers 1 through 1,116 inclusive, instead of 1 through 1,122 inclusive.

Request To Correct a Typographical Error

The CAA points out that, in the applicability of the proposed AD, the reference to ''47–100B'' should be ''747–100B.'' The FAA concurs. The final rule has been changed accordingly.

New Service Information

Since issuance of the proposed AD, the FAA has reviewed and approved Boeing Service Bulletin 747–57A2302, Revision 1, dated June 18, 1998. This new revision is essentially the same as the original issue of this service bulletin, which was cited in the proposed AD as the appropriate source of service information for accomplishment of the actions required. However, Revision 1 reduces the number of airplanes included in the service bulletin effectivity (as stated previously), adds a supplemental fastener kit and optional fasteners, clarifies certain procedures, and adds additional references.

The FAA has determined that the inspection and follow-on corrective actions required by paragraph (a) of the final rule may be accomplished in accordance with either of those service bulletins. The final rule has been revised accordingly.

Editorial Changes to the Final Rule

The FAA has determined that it is necessary to clarify what prompted this amendment in the Summary section of the AD by adding a more detailed description of the damage that occurred. The text now reads that a piece of the left wing inboard foreflap came off during a landing approach ''and struck and penetrated the airplane fuselage.'' The final rule has been changed accordingly.

The FAA also has determined that it is necessary to clarify the intent of the final rule by specifying the types of discrepancies (missing, loose, or migrated shim; and loose fasteners) to be identified during the inspection required by paragraph (a) of this AD. Paragraph (a) and the Summary section of the final rule has been revised accordingly.

The FAA also has determined that it is necessary to further clarify paragraph (a) of this AD. The FAA has added that follow-on corrective actions are required ''if any discrepancy is detected,'' and that the corrective actions are to be accomplished in accordance with the applicable chapter of the Boeing Airplane Maintenance Manual specified in either the previously referenced alert service bulletin or Revision 1. Paragraph (a) of this AD has been revised accordingly.

Conclusion

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

Cost Impact

There are approximately 991 airplanes of the affected design in the worldwide fleet. The FAA estimates that 213 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,780, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–05–02 Boeing: Amendment 39–11051. Docket 97-NM–254-AD.

Applicability: Model 747–100, 747–200B, 747–200F, 747–200C, 747SR, 747–100B, 747–300, 747–100B SUD, 747–400, 747–400D, and 747–400F series airplanes; having line numbers 1 through 1,116 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the outboard sequence carriage fitting, which could allow the wing inboard foreflap to separate and penetrate the fuselage, possibly injuring passengers and crewmembers, accomplish the following:

(a) Within 1,500 landings or 18 months after the effective date of this AD, whichever occurs first, perform a one-time detailed visual inspection of the outboard sequence carriage attachment fitting to detect any discrepancy (missing, loose, or migrated shim; and loose fasteners) in accordance with Boeing Alert Service Bulletin 747–57A2302, dated April 10, 1997, or Boeing Service Bulletin 747–57A2302, Revision 1, dated June 18, 1998. If any discrepancy is detected, accomplish follow-on corrective actions in accordance with the applicable chapter of the Boeing Airplane Maintenance Manual specified in either of the service bulletins.

(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.

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2302, dated April 10, 1997, or Boeing Service Bulletin 747–57A2302, Revision 1, dated June 18, 1998. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 1999.

Issued in Renton, Washington, on February 18, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–4630 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–238–AD; Amendment 39–11052; AD 99–05–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that requires replacement of the stringer clip(s) with a new stringer clip(s), and modification of the life raft support structure and/or life raft doors, as applicable. This amendment is prompted by by a report that certain life raft stowage compartments and certain life raft doors are understrength. The actions specified by this AD are intended to prevent a life raft falling from its stowage compartment, and consequently injuring nearby occupants or delaying or impeding the evacuation of passengers during an emergency landing.

DATES: Effective April 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes was published in the **Federal Register** on December 17, 1998 (63 FR 69569). That action proposed to require replacement of the stringer clip(s) with a new stringer clip(s), and modification of the life raft support structure and/or life raft doors, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received.

Three commenters support the proposed rule. Two commenters indicate that they are not affected by the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 256 airplanes of the affected design in the worldwide fleet. The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD.

For Groups 1 and 2 airplanes (as specified in the service bulletin), it will take approximately 32 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,544 (for Group 1 airplanes) or $4,801 (for Group 2 airplanes) per airplane. Based on these figures, the cost impact of the actions required by this AD on U.S. operators of Groups 1 and 2 airplanes is estimated to be $6,464 (for Group 1 airplanes), or $6,721 (for Group 2 airplanes) per airplane.

For Groups 3 and 4 airplanes, it will take approximately 30 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,668 (for Group 3 airplanes) or $3,530 (for Group 4 airplanes) per airplane. Based on these figures, the cost impact of the actions required by this AD on U.S. operators of Groups 3 and 4 airplanes is estimated to be $5,468 (for Group 3 airplanes), or $5,330 (for Group 4 airplanes) per airplane.

For Group 5 airplanes, it will take approximately 6 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $680 per airplane. Based on these figures, the cost impact of the actions required by this AD on this group of U.S. operators is estimated to be $1,040 per airplane.

For Group 6 airplanes, it will take approximately 20 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,785 per airplane. Based on these figures, the cost impact of the actions required by this AD on this group of U.S. operators is estimated to be $3,985 per airplane.

For Group 7 airplanes, it will take approximately 13 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,019 per airplane. Based on these figures, the cost impact of the actions required by this AD on this group of U.S. operators is estimated to be $1,799 per airplane.

For Group 8 airplanes, it will take approximately 15 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,187 per airplane. Based on these figures, the cost impact of the actions required by this AD on this group of U.S. operators is estimated to be $3,087 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–05–03 Boeing: Amendment 39–11052. Docket 98–NM–238–AD.

Applicability: Model 757–200 series airplanes, as listed in Boeing Service Bulletin 747–25–0180, dated October 9, 1997, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 a life raft from falling from its stowage compartment, and consequently injuring nearby occupants or delaying or impeding the evacuation of passengers during an emergency landing, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the stringer clip(s) with a new stringer clip(s), and modify the life raft support structure and/or life raft door, as applicable, in accordance with Boeing Service Bulletin 757–25–0180, dated October 9, 1997.

Alternative Methods of Compliance

(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 Certfication 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.

Special Flight Permits

(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.

Incorporation by Reference

(d) The replacement and modification shall be done in accordance with with Boeing Service Bulletin 757–25–0180, dated October 9, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 5, 1999.

Issued in Renton, Washington, on February 18, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–4629 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–76–AD; Amendment 39–11053; AD 99–05–05]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to International Aero Engines AG (IAE) V2500-A1 series turbofan engines, that requires initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. This amendment is prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed as a result of the processes used to manufacture the material. The actions specified by this AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure, and damage to the airplane.

DATES: Effective April 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Commercial Aero Engine Limited, P. O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL-TP. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to International Aero Engines AG (IAE) V2500-A1 series turbofan engines was published in the **Federal Register** on January 6, 1999 (64 FR 787). That action proposed to require initial and repetitive inspections of certain High Pressure Turbine (HPT) stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit. The action also proposed removal from service and replacement with a serviceable part in accordance with IAE Service Bulletin (SB) No. V2500-ENG–72–0344, dated December 18, 1998, if a subsurface anomaly is found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed actions contained in the notice of proposed rulemaking (NPRM).

One commenter notes that its operators are not affected by the proposed actions contained in the NPRM.

One commenter suggests changing some of the wording in the discussion section of the NPRM to more accurately describe the process by which a defect within the HPT stage 1 and stage 2 disks may have occurred. The FAA concurs and has made an appropriate wording change in the summary section.

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

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–05–05 International Aero Engines: Amendment 39–11053. Docket 98–ANE–76–AD.

Applicability: International Aero Engines AG (IAE) Models V2500–A1 turbofan engines, installed on but not limited to Airbus Industrie A320 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure, and damage to the airplane, accomplish the following:

(a) Ultrasonic inspect for subsurface anomalies those HPT stage 1 and stage 2 disks, with serial numbers listed in Tables 1, 2, 3, and 4 of IAE Service Bulletin (SB) V2500–ENG–72–0344, dated December 18, 1998, at the first opportunity when the engine is disassembled sufficiently to afford access to the High Pressure Turbine (HPT) subassembly, or no later than 10,000 cycles in service (CIS) from the effective date of this AD, whichever occurs first, in accordance with Paragraphs F (1) and (2) of IAE SB V2500–ENG–72–0344, dated December 18, 1998.

(b) Thereafter, repetitively ultrasonic inspect for subsurface anomalies those HPT disks identified in paragraph (a) whenever the engine is disassembled sufficiently to afford access to the HPT subassembly, or no later than 12,000 CIS since last ultrasonic inspection, whichever occurs first, in accordance with Paragraph F (1) and (2) of IAE SB V2500–ENG–72–0344, dated December 18, 1998.

(c) Those HPT disks rejected at inspection may not be reinstalled and must be replaced with a serviceable part.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(f) The inspections must be done in accordance with the following International Aero Engines SB:

Document No.	Pages	Revision	Date
V2500–ENG–72–0344 ..... Total pages: 8	1–8	Original	Dec. 18, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Commercial Aero Engine Limited, P. O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on April 30, 1999.

Issued in Burlington, Massachusetts, on February 19, 1999.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–4793 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–100–AD; Amendment 39–10974; AD 99–01–07]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 99–01–07, which applies to certain British Aerospace Jetstream Model 3101 airplanes. AD 99–01–07 requires installing additional stringers at the lower fuselage skin panels between the main and rear spar frames. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to correct a strength deficiency in the area of the lower fuselage skin panels between the main rear spar frames, which, if not corrected, could result in reduced or loss of control of the airplane during maximum speed limit operations.

EFFECTIVE DATE: March 19, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri

64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on December 31, 1998 (63 FR 72139). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on March 19, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on February 22, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–4890 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–99–AD; Amendment 39–10973; AD 99–01–06]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 99–01–06, which applies to certain British Aerospace Jetstream Model 3101 airplanes. AD 99–01–06 requires installing a standard bonding socket that is fitted flush with the upper surface of each wing at the fueling points (Station 297). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to correct a potentially insufficient ground contact between the refueler hose nozzle and the aircraft, which, if not corrected before the fuel cap is removed, could result in sparks with a consequent fire and/or explosion in the fuel tank.

EFFECTIVE DATE: March 19, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on December 31, 1998 (63 FR 72141). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on March 19, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on February 22, 1999.

Marvin R. Nuss,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–4889 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29475; Amdt. No. 1918]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore–(1) is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 19, 1999.

L. Nicholas Lacey,

Director, Flight standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAVA SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/04/99/	CA	Van Nuys	Van Nuys	FDC 9/0759	ILS Rwy 16R Amdt 5.
02/04/99/	CA	Van Nuys	Van Nuys	FDC 9/0761	VOR or GPS–A Amdt 3.
02/04/99/	CA	Van Nuys	Van Nuys	FDC 9/0764	VOR/DME or GPS–B Amdt 2.
02/05/99/	AK	Kake	Kake	FDC 9/0774	NDB/DME Rwy 10, Orig
02/05/99/	AK	Kake	Kake	FDC 9/0775	GPS Rwy 10, Orig
02/08/99/	PA	Washington	Washington County	FDC 9/0816	NDB or GPS Rwy 27 Orig-A
02/08/99/	PA	Washington	Washington County	FDC 9/0817	VOR or GPS–B Amdt 6A
02/08/99/	PA	Washington	Washington County	FDC 9/0818	LOC Rwy 27 Amdt 1
02/09/99/	FL	Vero Beach	Vero Beach Muni	FDC 9/0830	VOR/DME or GPS Rwy 29L, Amdt 2B
02/09/99/	FL	Vero Beach	Vero Beach Muni	FDC 9/0831	VOR or GPS Rwy 11R, Amdt 12A
02/09/99/	IA	Waterloo	Waterloo Muni	FDC 9/0826	ILS Rwy 12, Amdt 8
02/10/99/	PA	Bradford	Bradford Regional	FDC 9/0840	ILS Rwy 32 Amdt 10
02/12/99/	IN	Indianapolis	Indianapolis Downtown-Heliport	FDC 9/0865	COPTER VOR/DME 287, Amdt 1
02/12/99/	MA	Hyannis	Barstable Muni-Boardman/Polando Field.	FDC 9/0859	ILS Rwy 15 Amdt 2B
02/12/99/	MA	Hyannis	Barstable Muni-Boardman/Polando Field.	FDC 9/0860	VOR or GPS Rwy 6 Amdt 7A
02/12/99/	MA	Hyannis	Barstable Muni-Boardman/Polando Field.	FDC 9/0861	NDB or GPS Rwy 24 Amdt 9B

FDC date	State	City	Airport	FDC No.	SIAP
02/12/99/	MA	Hyannis	Barstable Muni-Boardman/Polando Field.	FDC 9/0862	ILS Rwy 24 Amdt 16D
02/12/99/	NE	Hartington	Hartington Muni	FDC 9/0875	VOR/DME Rwy 31, Orig
02/12/99/	OK	Ardmore	Ardmore Downtown Executive	FDC 9/0879	VOR/DME RNAV Rwy 35, Amdt 5
02/16/99/	OK	Grove	Grove Muni	FDC 9/0918	GPS Rwy 18, Orig
02/16/99/	TX	Austin	Austin-Bergstrom Intl	FDC 9/0911	ILS Rwy 35L, Amdt 1

[FR Doc. 99–4997 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29474; Amdt. No. 1917]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Indidivudl SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd, Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on February 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

Part 97—Standard Instrument Approach Procedures

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective March 25, 1999

St Joseph, MO, Rosecrans Memorial, RADAR–1, Orig
St Louis, MO, Spirit of St Louis, VOR OR GPS RWY 8R, Amdt 7A, CANCELLED
St Louis, MO, Spirit of St Louis, VOR RWY 26L, Amdt 5, CANCELLED
Newark, NJ, Newark Intl, NDB OR GPS RWY 4R, Amdt 6
Newark, NJ, Newark Intl, NDB OR GPS RWY 4L, Amdt 10
Newark, NJ, Newark Intl, ILS RWY 4R, Amdt 11
Newark, NJ, Newark Intl, ILS RWY 4L, Amdt 12
Newark, NJ, Newark Intl, COPTER ILS/DME RWY 4L, Amdt 1
Hamilton, OH, Hamilton-Fairfield, LOC RWY 29, Amdt 1
Hamilton, OH, Hamilton-Fairfield, NDB–A, Amdt 3
Hamilton, OH, Hamilton-Fairfield, GPS RWY 11, Orig
Hamilton, OH, Hamilton-Fairfield, GPS RWY 29, Amdt 2
Amarillo, TX, Amarillo Intl, VOR RWY 22, Orig
Amarillo, TX, Amarillo Intl, VOR RWY 22, Orig, CANCELLED
Amarillo, TX, Amarillo Intl, VOR/DME RWY 13, Orig
Amarillo, TX, Amarillo Intl, VOR/DME RWY 22, Orig
Amarillo, TX, Amarillo Intl, VOR/DME RWY 31, Orig
Amarillo, TX, Amarillo Intl, VOR/DME–A, Orig
Amarillo, TX, Amarillo Intl, LDA/DME RWY 22, Amdt 1
Amarillo, TX, Amarillo Intl, NDB RWY 4, Amdt 17
Amarillo, TX, Amarillo Intl, ILS RWY 4, Amdt 22
Amarillo, TX, Amarillo Intl, RADAR –1, Amdt 16
Amarillo, TX, Amarillo Intl, GPS RWY 4, Amdt 1
Amarillo, TX, Amarillo Intl, GPS RWY 13, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 22, Amdt 1
Amarillo, TX, Amarillo Intl, GPS RWY 31, Orig
Amarillo, TX, Tradewind, NDB OR GPS–A, Amdt 14
Amarillo, TX, Tradewind, VOR/DME RNAV RWY 35, Orig
Amarillo, TX, Tradewind, GPS RWY 35, Orig
Amarillo, TX, Tradewind, VOR/DME RNAV OR GPS RWY 35, Amdt 8, CANCELLED
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17L, Orig
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35R, Orig
Borger, TX, Hutchinson County, VOR OR GPS RWY 17, Amdt 8
Borger, TX, Hutchinson County, VOR/DME OR GPS RWY 35, Amdt 3
Dumas, TX, Moore County, VOR/DME OR GPS–A, Amdt 6
Houston, TX, George Bush Intercontinental Arpt/Houston, ILS RWY 27, Amdt 2
Pampa, TX, Perry LeFors Field, VOR/DME OR GPS–A, Amdt 2
Pampa, TX, Perry LeFors Field, NDB RWY 17, Amdt 4
Pampa, TX, Perry LeFors Field, GPS RWY 17, Orig

. . . Effective April 22, 1999

San Jose, CA, San Jose Intl, VOR/DME RNAV RWY 30L, Orig-A, CANCELLED
Buffalo, MN, Buffalo Muni, VOR OR GPS–B, Amdt 4
Willmar, MN, Willmar Muni-John L. Rice Field, VOR RWY 10, Amdt 2
Willmar, MN, Willmar Muni-John L. Rice Field, VOR OR GPS RWY 28, Amdt 2
Willmar, MN, Willmar Muni-John L. Rice Field, LOC RWY 28, Amdt 1
Willmar, MN, Willmar Muni-John L. Rice Field, GPS RWY 10, Amdt 1
Shirley, NY, Brookhaven, NDB–A, Amdt 5
Port Clinton, OH, Carl R. Keller Field, VOR/DME OR GPS–A, Amdt 8
Port Clinton, OH, Carl R. Keller Field, NDB RWY 27, Amdt 12
Port Clinton, OH, Carl R. Keller Field, GPS RWY 27, Amdt 1
Clinton, OK, Clinton-Sherman, GPS RWY 35L, Orig
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV RWY 15, Amdt 2, CANCELLED
Philadelphia, PA, Northeast Philadelphia, VOR/DME RNAV RWY 33, Amdt 4, CANCELLED

. . . Effective May 20, 1999

Grand Junction, CO, Walker Field, VOR OR GPS RWY 11, Amdt, 1, CANCELLED
Belle Plaine, IA, Belle Plaine Muni, GPS RWY 17, Orig
Belle Plaine, IA, Belle Plaine Muni, GPS RWY 35, Orig
Denison, IA, Denison Muni, NDB RWY 30, Amdt 5
Denison, IA, Denison Muni, GPS RWY 12, Orig
Denison, IA, Denison Muni, GPS RWY 30, Orig
Grinnell, IA, Grinnell Regional, NDB RWY 13, Amdt 2
Grinnell, IA, Grinnell Regional, GPS RWY 13, Orig
Terre Haute, IN, Terre Haute International-Hulman Field, GPS RWY 32, Orig
Flint, MI, Bishop Intl, GPS RWY 9, Orig
Steubenville, OH, Jefferson County Airpark, GWS RWY 14, Orig
Steubenville, OH, Jefferson County Airpark, GWS RWY 32, Orig
Casper, WY, Natrona County Intl, ILS RWY 3, Amdt 5

[FR Doc. 99–4996 Filed 2–26–99; 8:45 am]
BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 20

Global Direct—Canada Admail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On January 19, 1999, the Postal Service adopted Global Direct—Canada Admail, a service which is based on the Admail service offered by Canada Post Corporation (CPC). CPC is changing rates for items that may be mailed in this service. The Postal Service is changing Global Direct—Canada Admail to comply with these changes effective March 1, 1999.

EFFECTIVE DATE: March 1, 1999.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, Costing, and Classification, International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 370-IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9:00 a.m. and 4:00 p.m., Monday

through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256.

SUPPLEMENTARY INFORMATION: In cooperation with CPC, the Postal Service introduced Global Direct—Canada Admail. This international mail service is primarily intended for major printing firms, direct marketers, mail order companies, and other high-volume mailers seeking easier access to the Canadian domestic postal system. It is intended to provide mail delivery in an average of 5 to 10 business days in major urban areas throughout Canada. Ancillary services for local business reply and the return of undeliverable mail were also introduced for use with Global Direct—Canada Admail.

CPC has announced a rate change for Admail effective March 1, 1999. This makes it necessary for the Postal Service to adjust the rates it charges.

The Postal Service is also introducing discounts for Global Direct—Canada Admail based on the amount of postage spent by a mailer in the preceding postal fiscal year for IPA, ISAL, and Global Direct—Canada Admail. A mailer spending $2 million or more for IPA, ISAL, and Global Direct—Canada Admail will receive a 5 percent discount. Mailers spending over $5 million receive a 10 percent discount and a 15 percent discount for over $10 million. The discount is calculated on the mailing statement.

Effective March 1, 1999, the following rates are adopted for Global Direct—Canada Admail:

	Standard	Large
Letter Carrier Presort (LCP)		
First 1.76 ounces (50 g):		
Letter Carrier Direct	$0.241	$0.294
Station	0.272	0.325
Direct Rural	0.272	0.325
City	0.294	0.347
Distribution Center Facility	0.294	0.347
Forward Consolidation Point	0.332	0.385
Residue	0.332	0.385
Over 1.76 ounces (0.1100 lbs.):		
Per additional pound	0.576	0.747
National Distribution Guide (NDG)		
First 1.76 ounces (50 g)	0.302	0.355
Over 1.76 ounces (0.1100 lbs.):		
Per additional pound	0.576	0.747

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service is amending Subchapter 612, Global Direct—Canada Admail, International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal service.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended as follows:

CHAPTER 6—SPECIAL PROGRAMS

610 Global Direct Service

* * * * *

612 Global Direct—Canada Admail

* * * * *

612.3 Postage

[Revise 612.31 and Exhibit 612.3 as follows:]

612.31 Rate

The rate of postage is determined by the size, weight, and level of sortation of the items being mailed as specified in Exhibit 612.3:

Exhibit 612.3

CANADA ADMAIL RATES

	Standard	Large
Letter Carrier Presort (LCP)		
First 1.76 ounces (50 g):		
Letter Carrier Direct	$0.241	$0.294
Station	0.272	0.325
Direct Rural	0.272	0.325
City	0.294	0.347
Distribution Center Facility	0.294	0.347
Forward Consolidation Point	0.332	0.385
Residue	0.332	0.385
Over 1.76 ounces (0.1100 lbs.):		
Per additional pound	0.576	0.747
National Distribution Guide (NDG)		
First 1.76 ounces (50 g)	0.302	0.355

CANADA ADMAIL RATES—Continued

	Standard	Large
Over 1.76 ounces (0.1100 lbs.):		
Per additional pound	0.576	0.747

Note: A extra charge of 3.5 cents may be charged for the number of items not meeting address accuracy requirements.

Mailers spending $2 million or more for IPA, ISAL, and Global Direct—Canada Admail will receive a 5 percent discount. Mailers spending over $5 million receive a 10 percent discount and a 15 percent discount for over $10 million. The discount is calculated on the mailing statement.

* * * * *

A transmittal letter changing the relevant pages in the International Mail Manual will be published and automatically transmitted to all subscribers. Notice of issuance of the transmittal will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–4974 Filed 2–24–99; 3:29 pm]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–049–1–9907a; FRL–6236–1]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on October 23, 1998, by the State of Alabama. These revisions were made to comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to Chapter 335–3–1—General Provisions.

DATES: This direct final rule is effective April 30, 1999 without further notice, unless EPA receives adverse comment by March 31, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by ADEM may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104

Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION:

I. Analysis of State Submittal

Chapter 335–3–1—General Provisions

Rule 335–3–1–.02(gggg)

The Alabama Department of Environmental Management (ADEM) submitted revisions to this rule to add methyl acetate to the list of chemicals excluded from the definition of VOC on the basis that it has negligible photochemical reactivity. Methyl acetate has the potential for use as a solvent in paints, inks, and adhesives.

Periodically, EPA updates the list of exempt chemicals after extensive research has been conducted on the specified chemicals. For a more detailed rationale on why this chemical was found to have negligible photochemical reactivity, see the document published in the **Federal Register** on April 9, 1998 (63 FR 17331).

Rule 335–3–1–.03(5)

This rule was revised to change the word ''Section'' to ''Rule.''

II. Final Action

EPA is approving the aforementioned changes to the state implemetation plan (SIP). The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 April 30, 1999 without further notice unless the Agency receives adverse comments by March 31, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and 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. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 30, 1999 and no further action will be taken on the proposed rule.

III. 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 Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials and 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 April 30, 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, Intergovernmental relation, Nitrogen dioxide, and Ozone.

Dated: January 28, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *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 B—Alabama

2. Section 52.50 is amended by revising the heading of the table in paragraph (c) and revising the entries for ''335–3–1–.02'' and ''335–3–1–.03'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED ALABAMA REGULATIONS

Chapter No. 335–3–1		General provisions		
State citation	Title subject	Adoption date	EPA approval date	Federal Register notice
* *	*	*	*	* *
335–3–1–.02	Definitions	10/13/98	March 1, 1999	[Insert citation of publication.]
335–3–1–.03	Ambient Air Quality Standards	10/13/98	March 1, 1999	[Insert citation of publication.]
* *	*	*	*	* *

* * * * *

[FR Doc. 99–4688 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7708]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community number	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Iowa: Mitchell County, unincorporated areas	190892	January 8, 1999	June 11, 1977.
Georgia:			
Johnson County, unincorporated areas	130567	January 11, 1999	
Truetlen County, unincorporated areas	130175	January 22, 1999	
Kentucky: Menifee County, unincorporated areas	210344	Janaury 25, 1999	
New Eligibles—Regular Program			
Florida: Hampton, city of, Bradford County	120627	January 15, 1999	November 15, 1989.
North Carolina:			
Red Oak, town of Nash County [1]	370516	January 22, 1999	January 20, 1982.
Carolina Shores, town of, Brunswick County [2]	370517	January 26, 1999	August 18, 1992 & February 4, 1988.

State/location	Community number	Effective date of eligibility	Current effective map date
Reinstatements			
Michigan:.			
Selma, township of, Wexford County	260757	April 7, 1986, Emerg; September 30, 1988, Reg; August 3, 1998, Susp; January 15, 1999, Rein.	August 3, 1998.
Regular Program Conversions			
Region II			
New Jersey: Berkeley Heights, township of, Union County.	340459	January 6, 1999, Suspension Withdrawn	January 6, 1999.
Region III			
West Virginia: Jefferson County, unincorporated areas.	540065	.....do	Do.
Region V			
Minnesota:			
Henderson, city of, Sibley County	270440	.....do	Do.
Red Wing, city of, Goodhue County	270146	.....do	Do.
Sibley County, unincorporated areas	270620	.....do	Do.
Ohio:.			
Mason, city of, Warren County	390559	.....do	Do.
Region IX			
Nevada:			
Churchill County, unincorporated areas	320030	.....do	Do.
Fallon, city of, Churchill County	320002	.....do	Do.
Region VI			
Louisiana:			
Duson, town of, Lafayette Parish	220104	January 20, 1999, Suspension Withdrawn	January 20, 1999.
Lafayette Parish, unincorporated areas	220101	.....do	Do.
Oklahoma:			
Cleveland County, unincorporated areas	400475	.....do	Do.
Norman, city of, Cleveland County	400046	.....do	Do.
Slaughterville, town of, Cleveland County	400539	.....do	Do.
Texas:			
Ellis County, unincorporated areas	480798	.....do	Do.
Midlothian, city of, Ellis County	480801	.....do	Do.
Ovilla, city of, Ellis County	481155	.....do	Do.
Palmer, city of, Ellis County	480209	.....do	Do.
Waxahachie, city of, Ellis County	480211	.....do	Do.
Region VII			
Kansas:			
Perry, city of, Jefferson County	200153	.....do	Do.
Region VIII			
Wyoming:			
Ranchester, town of, Sheridan County	560046	.....do	Do.
Thermopolis, town of, Hot Springs County	560026	.....do	Do.
Region IX			
California:			
Burbank, city of, Los Angeles County	065018	.....do	Do.
Santa Clara, city of, Santa Clara County	060350	.....do	Do.
Region X			
Washington:			
Okanogan County, unincorporated areas	530117	.....do	Do.

[1] The Town of Red Oak has adopted the Nash County (CID #370278) Flood Insurance Rate Map dated January 20, 1982, panel 80.

[2] The Town of Carolina Shores has adopted the Brunswick County (CID #370295) Flood Insurance Rate Map dated August 18, 1992, panel 315 and the Town of Calabash (CID #370395) Flood Insurance Rate Map dated February 4, 1988.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA-Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: February 22, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–4985 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

45 CFR Part 60

RIN 0906–AA42

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Charge for Self-Queries

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the existing regulations implementing the Health Care Quality Improvement Act of l986 (the Act), which established the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). The final rule amends the existing fee structure so that the Data Bank can fully recover its costs, as required by law. This rule removes the prohibition against charging for self-queries and, therefore, allows the Data Bank to assess costs in an equitable manner. This is consistent with both the Freedom of Information Act and the Privacy Act which allow the Government to charge fees for the reproduction of records. The Data Bank will continue its current practice of sending to the practitioner in whose name it was submitted—automatically, without a request, and free of charge—a copy of every report received by the Data Bank for purposes of verification and dispute resolution.

EFFECTIVE DATE: These regulations are effective March 1, 1999. The Department has announced as a notice, published elsewhere in this issue, the actual fee and its effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–2300.

SUPPLEMENTARY INFORMATION: On March 24, 1998, the Secretary published a Notice of Proposed Rulemaking (NPRM) (63 FR 14059) in order to remove the prohibition against charging practitioners a fee when they request information about themselves (self-query). The Department received four public comments opposing the provisions of this rule. The Secretary would like to thank the respondents for the thoroughness and quality of their comments. Among the four comments received, seven specific issues were raised. These seven issues and the Department's responses to these issues appear below.

One respondent mistakenly cited § 60.12 of the Data Bank regulations (45 CFR part 60) as a section of the legislation, the Health Care Quality Improvement Act of 1986, as amended, that led to the creation of the Data Bank. The respondent subsequently erroneously concluded that the Act prevents the Data Bank from establishing a fee for self-queries.

The Department would like to clarify that the Act does not preclude the Data Bank from charging a fee for self-queries. Section 427(b)(4) of the Act states:

> The Secretary may establish or approve reasonable fees for disclosure of information * * *

It is the current regulatory language, which this Final Rule amends, that is preventing the Data Bank from charging a fee for self-queries.

Two respondents indicated that health care practitioners should not have to pay a fee in order to exercise their Privacy Act rights to view Data Bank information about themselves.

Section 522(f)(5) of the Privacy Act does allow for the imposition of fees for providing individuals copies of their own Federal records, such as those contained in the Data Bank. Nevertheless, the Department will continue to appropriately respond to its obligations under the Privacy Act and its own policy of fair information practice by proactively providing a copy to the practitioner in whose name it was submitted—free of charge—a copy of every report received by the Data Bank for purposes of verification and dispute resolution. However, the Department reiterates that the purpose of the great majority of the self-queries that the Data Bank receives is not about practitioners' exercising their Privacy Act rights to access to information about themselves. In conversations with practitioners who call for self-query assistance, nearly all indicate that they are acting under duress and in response to demands from licensing bodies and other entities to submit copies of their Data Bank records as a condition of doing business. In exchange for these records, these practitioners expect to benefit by obtaining licenses to practice, membership in various organizations or, perhaps, malpractice insurance.

Two respondents questioned why the cost of self-queries should be shifted to the practitioners, when it is the licensing bodies and other entities that, by forcing practitioners to submit their self-query results in order to obtain licensure or membership, are creating the great increase in the volume of self-queries.

The Department encourages authorized queriers, such as licensing boards, to query the Data Bank directly to ensure they are getting accurate and complete information. However, since these organizations are not required by the Act to query, the Department has no way of mandating that they query the Data Bank directly, instead of requiring practitioners to provide self-query responses.

One respondent indicated that the Department should charge the entities, such as licensing bodies and malpractice insurers, that are forcing practitioners to provide their self-query responses in order to obtain licensure or malpractice insurance. The Department does not know which entities are requiring self-query responses, and has neither the legal authority to charge the entity nor any practical way to collect the fee from the entity.

One respondent indicated that the Department should focus its efforts on thwarting unauthorized entities, such as managed care organizations without formal peer review processes, who are ''abusing the law'' by requiring practitioners to submit their self-query results in order to obtain membership.

The Department shares these concerns about unauthorized entities obtaining Data Bank information. However, under current law, the Department cannot prosecute any act related to the use of Data Bank information other than unlawful disclosure. It is the Secretary's position that a practitioner's disclosure of his or her own Data Bank records is not unlawful disclosure. In other words, practitioners may give copies of self-query responses to anyone they choose.

One respondent asked that the Department take into account the financial burden the self-query fee would place on physicians, particularly young physicians as they apply for licensure and membership.

The Department will make every effort to ensure that the self-query fee is nominal and no more than is necessary to recover the costs of processing.

One respondent suggested that the Department should consider an on-line, Internet self-query system to minimize the cost of self-queries.

The Department is actively examining the feasibility of an Internet-based self-query process, but is concerned that the current technology may not provide a means of ensuring that a self-query submitted via the Internet is actually from the practitioner in whose name the query is made. If an Internet-based approach is ultimately implemented, cost savings would be passed along to queriers.

The Department also notes that individual practitioners have expressed almost no opposition to the imposition of a self-query charge. Indeed, the current self-query form, introduced in April of 1998, includes a field for the practitioner's credit card number. This field was included when other changes were made to the form so that the Data Bank could begin collecting the self-query fee, if ultimately imposed, without having to print another set of forms. Thus, practitioners who self-query have had constructive notice of the possibility of the imposition of a fee since April of this year. Despite the fact that the form does not list a specific charge, and the instructions clearly indicate that no charge is being imposed at this time, practitioners have willingly provided their credit card numbers on the new form. Furthermore, in conversations with practitioners who call the Data Bank for assistance in completing the self-query form, there have been no complaints about the possibility of paying a fee for self-query processing. The Data Bank, of course, has not actually charged for any self-queries. We believe that the fact that practitioners have willingly provided their credit card numbers on the new form without complaint is a very significant indication that there is little or no opposition by individual practitioners to imposition of a fee for the service of providing a self-query response.

Therefore, the change to remove the prohibition against charging practitioners a fee when they request information about themselves has been retained as proposed. The Department has amended § 60.12 by deleting the phrase ''other than those of individuals for information concerning themselves'' in the first sentence of paragraph (a).

A notice published elsewhere in this issue of the **Federal Register** announces the fee for self-queries and the effective date of the change. As with other changes, this fee will be subject to change as further costs may warrant.

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department believes that the resources required to implement the requirement in these regulations are minimal. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a ''significant'' rule under Executive Order 12866.

Paperwork Reduction Act of 1995

The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners regulation contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned control number 0915–0126. This amendment does not affect the recordkeeping or reporting requirements in the existing regulations.

List of Subjects in 45 CFR Part 60

Claims, Fraud, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice.

Dated: October 29, 1998.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: November 18, 1998.

Donna E. Shalala,

Secretary.

Accordingly, 45 CFR part 60 is amended as set forth below:

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

2. Section 60.12, is amended by revising the first sentence in paragraph (a) to read as follows:

§ 60.12 Fees applicable to requests for information.

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank. * * *

* * * * *

[FR Doc. 99–4871 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545 and 571

[Docket No. 98–21]

Miscellaneous Amendments to Rules of Practice and Procedure; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Inadvertently, § 545.1 was not amended as intended.

EFFECTIVE DATE: May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 17, 1999, (64 FR 7804) which, among other changes, amended § 545.1. The FMC inadvertently omitted an intended correction to § 545.1, replacing the term ''conferences,'' with ''agreements between or among ocean common carriers.''

In Docket No. 98–21, published on February 17, 1999, (64 FR 7804) make the following correction. On page 7813, in the first column, in paragraph (a) of *§ 545.1 Interpretation of Shipping Act of 1984–Refusal to negotiate with shippers' associations,* replace the term ''conferences'' with ''agreements between or among ocean common carriers.''

Dated: February 24, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–5002 Filed 2–26–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–235; RM–9187]

Radio Broadcasting Services; Pecos and Wink, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a petition for rule making filed by Ronald W. Latimer. *See* 62 FR 65781, December 16, 1997. The petition requested the reallotment of Channel 247C1 from Pecos, Texas, to Wink, Texas, and modification of the construction permit for Station KKLY at Pecos to specify operation on Channel 247C1 at Wink. Retention of the channel in Pecos provides a first full-time aural service to the community while reallotment of the channel would have provided a first local service at Wink. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–235, adopted February 3, 1999, and released February 12, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–4931 Filed 2–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–63, RM–9209, RM–9392, RM–9393]

Radio Broadcasting Services; Pottsboro and Whitesboro, TX, and Madill and Leonard, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C2 for Channel 273A at Madill, Oklahoma, reallots Channel 273C2 from Madill, to Whitesboro, Texas, and modifies the license of Station KMAD–FM to specify operation on Channel 273C2 at Whitesboro. Pursuant to a Joint Settlement Agreement, this document also dismisses a proposal filed by Thomas E. Spellman d/b/a Grayson Broadcasting Company for a Channel 273C2 allotment at Pottsboro, Texas, and a proposal by Thomas S. Desmond for a Channel 273A allotment at Leonard, Oklahoma. *See* 63 FR 27544, published May 19, 1998. The reference coordinates for Channel 273C2 at Whitesboro, Texas, are 33–49–29 and 96–46–44. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–63 adopted February 10, 1999, and released February 12, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Whitesboro, Channel 273C2.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 272A at Madill.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–4932 Filed 2–26–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–98–4943 (HM–225B)]

RIN 2137–AD31

Hazardous Materials: Authorization for the Continued Manufacture of Certain MC 331 Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule extends from March 1, 1999 to July 1, 1999, the period for continued manufacture of MC 331 cargo tanks without certification and demonstrated performance of the emergency discharge control system. This amendment is necessary to provide for the uninterrupted production of specification MC 331 cargo tanks used in the transportation of propane, anhydrous ammonia and other liquefied compressed gases.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim or Susan Gorsky, Office of Hazardous Materials Standards, Research and Special Programs Administration (202) 366–8553.

SUPPLEMENTARY INFORMATION: On February 19, 1997, under Docket No. RSPA–97–2133 (HM–225) [62 FR 7638], the Research and Special Programs Administration (RSPA, ''we'') issued an emergency interim final rule to specify the conditions under which MC 330 and MC 331 cargo tank motor vehicles could continue to operate while RSPA and the industry addressed operational problems related to the cargo tank emergency discharge control system. A final rule extending and revising the provisions of the emergency interim final rule was issued on August 18, 1997 [62 FR 44038]. The August 18 final rule

included a provision permitting continued manufacture of MC 331 cargo tanks without certification and demonstrated performance of the emergency discharge control system until March 1, 1999.

We issued a final rule responding to petitions for reconsideration and clarifying certain provisions of the August 18 final rule on December 10, 1997 [62 FR 65187]. In this final rule, RSPA extends the expiration date of certain provisions of the previous final rule from March 1, 1999 to July 1, 1999. This change was based on a request from Farmland Industries, Inc. and The Fertilizer Institute asking that the agency allow a four-month extension of the expiration date to July 1, 1999, to avoid expiration of the requirements at the beginning of the fertilizer industry's peak delivery season.

A provision in the August 18, 1997 final rule permits, until March 1, 1999, a new cargo tank motor vehicle to be marked and certified as conforming to specification MC 331 without certification and demonstrated performance of the emergency discharge control system. RSPA did not change the date for this provision in the December 10, 1997 final rule because it was not requested by petitioners and we did not anticipate a need to extend the date at that time. RSPA has subsequently established a negotiated rulemaking committee (the Committee) which is developing alternative safety standards for unloading liquefied compressed gases to replace those standards that expire on July 1, 1999.

On January 12, 1999, for consistency with the work of the Committee and the expiration date of the final rule, RSPA published a notice of proposed rulemaking (NPRM) under Docket No. RSPA–98–4943 (64 FR 1789). This notice proposed to extend from March 1, 1999 to July 1, 1999 the period for continued manufacture of MC 331 cargo tanks without certification and demonstrated performance of the emergency discharge control system. The comment period ended on February 11, 1999, and no comments were received to the proposed change. Therefore, in this final rule, the expiration date is changed from March 1, 1999 to July 1, 1999 for the continued production of specification MC 331 cargo tanks used in the transportation of propane, anhydrous ammonia and other liquefied compressed gases.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

RSPA did not prepare a regulatory evaluation for this rule. However, a final regulatory evaluation was prepared in support of the December 10, 1997 final rule. The final regulatory evaluation is available for review in that public docket.

Executive Order 12612

This rule has been analyzed according to the principles and criteria contained in Executive Order 12612 (''Federalism''). The Federal hazardous materials transportation law (49 U.S.C. 5101—5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(A) The designation, description, and classification of hazardous materials;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(C) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements relating to the number, content, and placement of such documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(E) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the manufacturing of a container used in the transportation of a hazardous material.

This final rule would preempt any State, local, or Indian tribe requirements concerning the above mentioned subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Title 49 U.S.C. 5125(b)(2) provides that DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be June 1, 1999 under this document. RSPA has determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13084

This rule will not significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order (''Consultation and Coordination with Indian Tribal Government''). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rule would have a significant economic impact on a substantial number of small entities. This rule extends the expiration date of the current rule from March 1, 1999 to July 1, 1999. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This rule does not impose business process changes or require modifications to computer systems. Because this rule does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the requirements in this rule.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.5 [Amended]

2. In § 171.5, in paragraph (a)(3), the date ''March 1, 1999'' is revised to read July 1, 1999''.

Issued in Washington, DC, on February 24, 1999, under authority delegated in 49 CFR Part 1.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–5093 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 980629162–9033–02; I.D. 093097E]

RIN 0648–AK42

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, issues regulations to govern the unintentional take of a small number of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (Vandenberg). Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Air Force's activity as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective March 1, 1999, until December 31, 2003.

ADDRESSES: A copy of the application and Environmental Assessment (EA) may be obtained by writing to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the persons listed under **FOR FURTHER INFORMATION CONTACT** section.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, telephone (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, telephone (562) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of up to 5 years if the Secretary finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Description of Request

On September 30, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from the 30th Space Wing, Vandenberg, to take marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg.

Vandenberg is located on the south-central coast of California. The base covers approximately 98,000 acres in western Santa Barbara County. The primary missions of the Air Force at Vandenberg are to launch and track satellites in space, test and evaluate the United State's intercontinental ballistic missile systems, and support aircraft operations. As a nonmilitary facet of operations, Vandenberg is also committed to promoting commercial space launch ventures.

Description of Activities

Vandenberg anticipates a total of 10 launches annually for Minuteman and

Peacekeeper missiles from North Vandenberg and a total of 20 launches annually for space launches (approximately 6 Delta II, 3 Taurus, 2 Atlas, 3 Titan IV, 2 Titan II, and 4 Lockheed Martin launch vehicles) primarily from South Vandenberg.

The noise from these launches may result in the unintentional disturbance of pinnipeds–considered to be unintentional, incidental takings under the MMPA. Such takings are prohibited by the MMPA unless authorized by NMFS.

These regulations replace annual incidental harassment authorizations issued to Vandenberg under section 101(a)(5)(D) of the MMPA. These authorizations have been issued for marine mammal takings incidental to launches by Lockheed-Martin launch vehicles (62 FR 40335, July 28, 1997), McDonnell Douglas Aerospace Delta II rocket launches (61 FR 59218, November 21, 1996), Taurus launches (62 FR 734, January 6, 1997) and Titan II and Titan IV launches (61 FR 64337, December 4, 1996). Incidental harassment authorizations for the latter three activities were reissued on December 19, 1997 (see 62 FR 67618, December 29, 1997), for an additional 1-year period or until these regulations become effective and Letters of Authorization (LOAs) are issued.

These regulations also authorize takings incidental to Minuteman and Peacekeeper missile launches, aircraft flight tests, and helicopter operations, none of which have had small take authorizations previously.

Aircraft test operations include the B–1 and B–2 bombers, the F–14, F–15, F–16, and F–22 fighters; and the KC–135 Stratotanker. The frequency for aircraft testing will be variable. The applicant anticipates an average of 10 flights per year, with 4 to 5 passes per flight. The maximum testing frequency could reach 3 flights per week.

Helicopter operations provide launch support, training, and base support. Only about 1 percent, or 13 hours, of the 1300 hours of helicopter operations scheduled per year would occur over the Vandenberg coastline.

Comments and Responses

On July 21, 1998 (63 FR 39055), NMFS published a notice of proposed rulemaking on the Air Force application and invited interested persons to submit comments, information, and suggestions concerning the application and proposed rule. During the 45-day comment period on that notice, one letter was received.

Comment 1: In addition to recommended changes to the rule text (see Changes to the Proposed Rule), the Marine Mammal Commission (MMC) recommends that the rule be issued provided that (1) continuation of the research program being carried out under an MMPA section 104 scientific research permit (SRP) be made a condition of the rule and (2) the authorized activities be suspended, pending review, should there be any indications that the activities covered by the rule are causing mortality or injuries or are affecting the distribution, size, or productivity of the potentially affected populations.

Response: The 30th Space Wing, U.S. Air Force, was issued a 5-year SRP on June 26, 1997 (see 62 FR 36049, July 3, 1997). Unless renewed, that permit will terminate on June 30, 2002. However, the scope of work under that SRP may be completed as early as June 2000 (Air Force, 1997). LOAs will require the scientific results of the monitoring and research to be submitted to NMFS no later than 120 days after completion of research. While monitoring will continue after that date, continuation of research after 2000 will depend upon peer review findings on research results, identified research deficiencies, and whether additional research is practical or needed to support or refute a negligible impact determination. Because much of this research is considered part of the monitoring requirements under section 101(a)(5) of the MMPA, monitoring and research is either a requirement of these regulations (§ 216.125(b)) or of LOAs (§ 216.125(c)).

NMFS does not agree that the authorized activities should be suspended, pending review, if there are any indications that the activities covered by the rule are causing mortality or injuries or are affecting the distribution, size, or productivity of the potentially affected populations. First, these regulations do not authorize the activity (rocket and missile launches, and military jet and helicopter activities); such authorization is under the jurisdiction of the Department of the Air Force and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat. Therefore, it is the suspension of an incidental take authorization (i.e., LOA) that would fall within NMFS purview rather than suspension of the activity itself. However, because taking a marine mammal by serious injury or mortality incidental to activities at Vandenberg is not authorized by these regulations (see § 216.123 *Prohibitions*), the authorization to take marine mammals may be subject to suspension if a taking by serious injury or mortality were to occur.

Prior to suspension of an LOA, however, NMFS must satisfy the statutory notice and comment requirement of section 101(a)(5)(B) of the MMPA, unless the takings pose a significant risk to the well-being of the marine mammal stock. In those cases, under section 101(a)(5)(C) of the MMPA, the notice and comment requirements do not apply prior to suspending an LOA due to the emergency conditions. The level of risk would depend upon the level of taking, the status of the affected stock(s), and the likelihood of additional serious injury and mortality takings. Conditions for suspension or withdrawal of an LOA are described in § 216.106.

Comment 2: The MMC also recommended that the rule be issued provided NMFS is satisfied that the research being conducted under the SRP and the site-specific monitoring that will be required under LOAs issued in accordance with this rule are capable of detecting possible cumulative effects on the hearing of individual seals and on the distribution, size, and productivity of the potentially affected populations. In that regard, the MMC recommends NMFS consult with scientists familiar with the demography and dynamics of harbor seals in and around Vandenberg to ensure that the final rule includes provisions for research and monitoring capable of detecting possible cumulative impacts.

Response: In 1996 (see Stewart, 1996; U.S. Air Force, 1997), the U.S. Air Force designed a research program to address cumulative impact from rocket launches on marine mammals. This research has been initiated under SRP No. 859–1373, June 26, 1997 (see 62 FR 24422 (May 5, 1997) for a brief description of research). Prior to the issuance of this SRP, the research was reviewed by the MMC and its Committee of Scientific Advisors and NMFS scientists. As a result, NMFS believes that testing the hearing effects over a series of launches, along with foraging behavior and survival of animals exposed to the noise, will provide a solid framework for understanding what effects, including cumulative effects, rocket launches have on pinnipeds that reside near Vandenberg and on the Northern Channel Islands (NCI). Through reporting requirements under both the SRP and this authorization, NMFS scientists will review progress made on this research and will recommend

modif-ications to the research, if necessary (see Comment 1 response).

Comment 3: Conversely, the MMC questions whether it is necessary to continue to require the type of site-specific monitoring that has documented that rocket launches and aircraft overflights can cause seals to flee into the water in certain circumstances and that most, if not all, of the affected animals resume normal behavior within several hours following the disturbance.

Response: The site-specific monitoring of previous year authorizations is part of the long-term monitoring effort designed to track trends in haulout patterns and seal distribution. As a result, NMFS believes this monitoring retains a useful function. Whether monitoring continues to be necessary in the future will be determined during the next rulemaking on this activity's incidental take authorization.

Comment 4: The MMC expresses concern, first, that neither the proposed rule nor the EA indicate whether studies were done to determine if repeated exposure from launches could cause permanent threshold shift (PTS) injuries to seals and sea lions, and, second, why NMFS believes that repeated exposures are unlikely to cause PTS. The rule or EA should provide either a clearer indication as to why NMFS believes this to be true or the research and monitoring that will be required to verify that any effects on hearing are in fact temporary.

Response: Excluding noise from sonic booms, which, if focused, has the potential to cause PTS injury, the best scientific information available to NMFS indicates that neither the intensity and duration, nor the event frequency of launch noise is sufficient to cause more than a slight temporary threshold shift (TTS) injury. In order to assess if auditory damage occurs due to launch noise at Vandenberg, the Air Force will test the hearing of up to five rehabilitated (beached/stranded) harbor seals using auditory brainstem response (ABR) techniques. ABRs are electrical potentials generated by the brainstem when the ear is stimulated by sound (Hall, 1992). ABR testing allows scientists to quickly and accurately assess changes in hearing acuity following exposure to noise.

If seals rehabilitated from strandings are not available, the Air Force will capture up to five harbor seals in the vicinity of the Rocky Point haulout area before launching and test their hearing using ABR methods. After the launch, the hearing will be retested. If a threshold shift occurs, the seals will be held until its hearing returns to normal or to a stable level. After completion of the experiment, the animal will be monitored until its reactions and behaviors return to normal. After post-launch ABR tests, the seals will be tagged and transported back to the point of capture and released when determined to be ready by the attending veterinarian. The next scheduled ABR test will be in 1999 in association with the launch of a Titan IV (Air Force, 1997).

In order to assess auditory damage by a sonic boom on NCI, the Air Force plans to capture up to five California sea lions, harbor seals, or elephant seals at selected sites (based upon predicted sonic boom footprint). These animals will also be tested by the ABR method. Because of its sensitivity to sound, harbor seals are the preferred species. Because tested animals will not be released until hearing returns to pre-exposure levels, NMFS believes that ABR testing will give a clearer indication of whether launch activities have the potential to result in PTS. If so, future research can be designed accordingly.

Comment 5: The MMC noted that neither the **Federal Register** nor the EA provided information on what would be done, or what would be required to investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding and other reproductive dysfunction mentioned in the preamble to the proposed rule. The MMC believes the final rule should provide a clearer indication of what LOA holders would be required to do to verify that their activities do not cause these effects.

Response: As stated in the preamble to the proposed rule, NMFS noted that there is some speculation that exposure to loud noise could cause certain physiological effects in pinnipeds, including those mentioned by the MMC. At this time there is no scientific evidence that these effects occur; there is only speculation. As a result, the Air Force has proposed to review, summarize, and evaluate the scientific, veterinary, and human medical literature to determine the physiological, pathological, and hormonal mechanisms involved in spontaneous abortion in mammals, to examine evidence for cause and effect, and to summarize the potential for spontaneous abortion in free-ranging pinnipeds exposed to loud or focused sonic booms.

The U.S. Air Force has also proposed to summarize and evaluate the scientific literature on the effects of separation of females and their newborn at various stages of maternal care on newborn survival in seals and sea lions. They will also evaluate the potential for disruption of the integrity of parent-offspring bonds in seals and sea lions exposed to loud sonic booms and provide recommendations on the need and protocol for evaluating the consequences of separation in the NCI (Air Force, 1996). Because of the extent of research already underway (see response to Comment 2), NMFS does not intend to require the Air Force to initiate additional research at this time. Reports on these two issues will be required to be submitted in the final report due 180 days prior to the expiration of the 5-year authorization. Depending upon the findings of the reports, research may be required under a future authorization.

Comment 6: The MMC notes that the pupping season on the NCI for the three pinniped species is December-January and March-July. Because of this extended period, the MMC questions whether the Air Force could avoid launching Titan IVs during this period. The MMC recommends that, if one or more launches could occur during the pupping seasons, the monitoring requirements should be revised, as necessary, to verify that the effects on pupping, mother-pup bonds, nursing and breeding are in fact negligible.

Response: To mitigate impacts to the lowest level practicable, NMFS recommends the Air Force not launch Titan IVs, whenever possible, which predict a sonic boom on NCI during harbor seal, elephant seal, and California sea lion pupping seasons. This is a guideline, not a prohibition. Because modeling allows advance predictions of focused sonic boom locations, which vary due to climatological conditions, the Air Force is able to use this guidance in planning Titan IV flight scheduling. NMFS recognizes however, that launch windows can vary due to project and weather delays. Because Titan IV launches can occur during the pupping season, the Air Force is researching the effects of sonic booms on pinnipeds. As mentioned, additional monitoring and research may be identified and initiated at a later date.

In addition, NMFS has imposed a video monitoring requirement for all launches during pupping seasons in order to document short-term effects on young seals.

Comment 7: The MMC questioned both the rationale for an annual report being submitted since all information presumably would be contained in the 90-day report and why this information was provided only in summary.

Response: NMFS is requiring the submission of annual reports in addition to 90-day reports in order to obtain information on takings that are not done in association with rocket and missile launchings, such as aircraft and helicopter exercises. Upon review, NMFS has removed the requirement that this information be provided only in summary form.

Comment 8: The MMC recommends that NMFS advise the Air Force that, if it has not already done so, that it should consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that missile and rocket launches and other activities at Vandenberg will not affect sea otters or critical components of their habitat in the area.

Response: Endangered Species Act (ESA), Section 7 consultations between the USFWS and the Air Force have been conducted for each launch vehicle and activity.

Description of Habitat and Marine Mammals Affected by Launch Activities

The Southern California Bight (SCB), including the Channel Islands, supports a diverse assemblage of 29 species of cetaceans (whales, dolphins, and porpoises) and 6 species of pinnipeds (seals and sea lions). Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*) breed there, with the largest rookeries on San Miguel Island (SMI) and San Nicolas Island (SNI). Guadalupe fur seals (*Arctocephalus townsendi*) may also occasionally inhabit SCB waters. Until 1977, a small rookery of Steller sea lions (*Eumetopias jubatus*) existed on SMI. However, there has been no breeding there since 1981 and no sightings on SMI since 1984. A group of 50 Stellers were observed off the Vandenberg coast in October 1993 (Roest, 1995). Additional information on the occurrence of marine mammal species in areas potentially impacted by Vandenberg activities is provided in Barlow *et al*., 1995 and 1997, Roest, 1995, the final EA on this proposed action (U.S. Air Force, 1997), and in **Federal Register** notices on previous authorizations (60 FR 24840, May 10, 1995 (Lockheed); 60 FR 43120, August 18, 1995 (Delta II); 61 FR 50276, September 25, 1996 (Taurus); and 61 FR 64337, December 4, 1996 (Titan)). For further information, please refer to these documents, which are available upon request (see **ADDRESSES**).

Summary of Potential Physical Impacts

The activities under consideration for small take authorizations under these regulations create two types of noise: Continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from Vandenberg. The operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch: (1) Combustion noise from launch vehicle chambers, (2) jet noise generated by the interaction of the exhaust jet and the atmosphere, (3) combustion noise from the post-burning of combustion products, and (4) sonic booms. Launch noise levels are highly dependent upon the type of first-stage booster and the fuel used to propel the vehicle. Therefore, there is a great similarity in launch noise production within each size class.

Sonic booms are impulse noises, as opposed to continuous (but short-duration) noise such as that produced by aircraft and rocket launches. There is a significant potential for sonic booms (i.e., overpressures greater than 0.5 pound/ft^2 (psf)) to occur during launches of low earth orbit payloads. These sonic booms can vary from inconsequential to severe, depending on the physical aspects of the launch vehicle, the trajectory of the launch, and the weather conditions at the time of the launch. The initial shock wave propagates along a path that grazes the earth's surface due to the angle of the vehicle and the refraction of the lower atmosphere. As the launch vehicle pitches over, the direction of propagation of the shock wave becomes more perpendicular to the earth's surface. These direct and grazing shock waves can intersect to create a narrowly focused sonic boom, about 1 mile of intense focus, followed by a larger region of multiple sonic booms.

Aircraft and helicopter activities also produce noise in the coastal environment. Jet aircraft produce significant subsonic noise with widely varying sound levels depending upon aircraft type, phase of flight, and other factors. Blade-rate tones account for high frequency squealing in jet sounds while the low-frequency roar is the jet mixing noise from engine exhaust (Richardson *et al*. (1995). The high frequency tones are rapidly absorbed in the atmosphere (>4 dB/kilometer (km)). To provide an example of noise levels for a typical aircraft, an F–16 aircraft at intermediate power and 300 ft (96.4 m) above the ground is projected to have a peak noise level of 103 dBA re 20 μPa-m, lasting from 1 to 3 seconds (U.S. Air Force, 1986).

The sounds from helicopters contain many tones related to rotor or propeller blade rate, with most energy at frequencies below 500 Hz. Measurements of a Bell 212 helicopter at an altitude of 500 ft (152 m) indicated a peak, received level at the surface of 109 dB re 1 μPa-m. Duration of noise on the surface may last up to 4 minutes, but less than 38 seconds (sec.) at 9.8 ft (3 m) depth, and 11 sec. at 60 ft (18 m)(Greene, 1985a; Richardson *et al*., 1995).

Marine Mammal Impact Assessment

Noise disturbance from operations at Vandenberg may cause negligible, short-term impacts to pinnipeds (seals and sea lions) hauled out on the Vandenberg coastline, and, if loud enough due to the proximity of the seals to the launch pad, may result in a TTS in hearing. Along the Vandenberg coast, launch noises are expected to impact principally harbor seals as other pinniped species (e.g., California sea lions and northern elephant seals) are known to haulout at these sites only infrequently and in significantly smaller numbers. The principal form of impacts would be the infrequent (approximately 30 launches per year; 50 aircraft flights per year) and unintentional incidental harassment resulting from noise generated by aircraft, helicopter, missile, and rocket launches and by the visual sighting of low-flying aircraft. Launch noises and sonic booms can be expected to cause a startle response and flight to water for those harbor seals, California sea lions and other pinnipeds that are hauled out on the coastline of Vandenberg and on the NCI. Launch noise is expected to occur over the coastal habitats in the vicinity of the Vandenberg launch sites during every launch, while sonic booms may be heard on NCI, principally SMI and Santa Rosa Island (SRI), only during certain launches of certain rocket types. A description of impacts from individual missile and rocket types on marine mammals can be found in the proposed rule (63 FR 39055, July 21, 1998) and are not repeated here.

Cumulative Impacts

Cumulative impacts that will occur to harbor seals, California sea lions, northern elephant seals, and northern fur seals have been discussed in the EA on this issue (U.S. Air Force, 1997), and need not be discussed further. However, the MMPA requires NMFS to determine that the total of such taking during the 5-year (or less) period will have a negligible impact on the species being taken. Using the information provided above, NMFS estimates that each rookery/haulout site along the

Vandenberg coastline will be impacted by sufficient noise at each launch to cause harbor seals to leave the rocks fewer than 30 times annually due to missile and rocket launches and associated helicopter safety patrols and 10 times annually due to aircraft operations. On the NCI, pinnipeds may potentially leave the beach only as a result of a sonic boom from Titan IV and Athena–3 launch passing over or in the vicinity of a haulout on one of the Islands. Such an event is unlikely to occur more than 3 to 5 times annually.

Long term effects, such as stress and emigration due to chronic exposure to noise, are not expected since all noise events will be transitory and limited in number and duration.

Mitigation

One mitigation measure of longstanding is the requirement that no vehicles launched from Vandenberg are allowed direct overflight of SRI, Santa Cruz Island, or Anacapa Island. Therefore, nominal flight azimuths from SLC–4, for example, must be west of SRI.

All aircraft and helicopter flight paths will maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Pt, Rocky Pt), except in emergencies or for real-time security incidents. Emergencies include search-and-rescue and fire-fighting, both of which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

Unless constrained by other factors including, but not limited to, human safety, national security, or launch trajectories, NMFS will request the Air Force to avoid, whenever possible, all missile and rocket launches during the harbor seal pupping season of February through May, and those Titan IV launches that predict a sonic boom on NCI during seal and sea lion pupping seasons.

Additional mitigation measures would be developed, if necessary, cooperatively between NMFS and the Air Force based on the degree of impact documented during monitoring activities following specific launches, especially Titan IV rockets. Additional mitigation measures would be contained in annual LOAs.

Research

Between 1991 and 1996, under a U.S. Air Force contract, research was conducted on the behavioral, auditory, and population responses of pinnipeds on the NCI to loud and focused sonic booms and to launch noise from Titan IV rockets launched from Vandenberg. The results of this research are provided in Stewart, 1996.

Under funding from the USAF and 30th Space Wing management, new research initiatives on the impacts of aerial noise on marine mammals have been undertaken. One study is to address the cumulative effects of rocket launch noise and sonic booms on pinnipeds at Vandenberg and on NCI. Studies include the following: (1) Hearing effects on seals from launch noise and the subsequent launch-generated sonic boom, (2) movements and haulout patterns of individual seals over the course of many rocket launches, (3) changes in seal demographic parameters over the 5-year study, and (4) foraging and diving behavior of seals exposed to launch noise. A scientific research permit has been issued for this research (see 62 FR 36049, July 3, 1997). A copy of the research plan is available upon request (see **ADDRESSES**).

There is some speculation that exposure to loud noise could cause other physiological effects in pinnipeds, including spontaneous abortion, disruption of effective female-neonate bonding, other reproductive dysfunction, detrimental health effects, and/or increased vulnerability to disease (Chappell *et al.*, 1980; Stewart *et al.*, 1996). While there has been little study of noise-induced stress in marine mammals (Richardson *et al.*, 1995), research initiatives have been identified (U.S. Air Force, 1996) and may be carried out in future years of this authorization.

Monitoring Measures

During the 5-year duration of this authorization, impacts of missile and space launches on marine mammals will be monitored to ensure that the taking is having no more than a negligible impact on California pinniped stocks. For each launch at Vandenberg, the pinniped rookery that could most likely be impacted by the launch monitoring will be monitored. For most launches, this would be Point Sal, Purisima Pt or Rocky Pt. Launch monitoring, as detailed in LOAs, will include: (1) designation of at least one biologically trained on-site observer (approved in advance by NMFS) to record the effects of launches on harbor seals and other pinnipeds; (2) observation of harbor seal activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch and continuing for at least 48 hours subsequent to launching; (3) observation of haulout sites on NCI if it is determined that a sonic boom could impact those areas (this determination will be made in coordination with NMFS); (4) video-recording of mother-pup seal responses for daylight launches during the pupping season; and (5) sound pressure level measurements of those launch vehicles not having acoustic measurements previous.

Reporting Requirements

A report containing the following information must be submitted to NMFS within 90 days after each launch: (1) Date(s) and time(s) of each launch, (2) date(s), location(s), and preliminary findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations, and (3) results of the monitoring programs, including, but not necessarily limited to, (a) numbers of pinnipeds present on the haulout prior to commencement of the launch, (b) numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise, (c) the length of time(s) pinnipeds remained off the haulout or rookery, (d) the numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and (4) any behavioral modifications by pinnipeds that likely were the result of launch noise or the sonic boom.

An annual report must be submitted to NMFS that describes any incidental takings not reported in the 90-day launch report, such as the aircraft test program and helicopter operations and any assessments made of their impacts on hauled-out pinnipeds.

A final report must be submitted to NMFS no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and the cumulative impact on pinnipeds and on other marine mammals from Vandenberg activities.

Conclusions

The expected short-term impact of aircraft testing and helicopter operations at Vandenberg, the launching of missiles from North Vandenberg, and the launching of rockets from North and South Vandenberg, at worst, will be a temporary reduction in utilization of the haulout as seals or sea lions leave the beach for the safety of the water. At this time, there is no scientific evidence to indicate that either launch noises or sonic booms have more than a negligible impact on the species or stocks of

marine mammals in southern California waters. While the numbers of pinnipeds leaving the beach due to harassment by some launch noises or sonic booms may not be small in actual numbers, because these takings will have no more than a negligible impact on the species or stock of marine mammal, these takings can be considered by definition (see definition of ''small numbers'' in § 216.103) to be small.

Launchings are not expected to result in any reduction in the number of pinnipeds occupying a haulout. Shortly after a launch, the number of pinnipeds occupying the haulout before the launch should be the same. Additionally, there would not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on pinnipeds at Vandenberg and the NCI are unlikely.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an EA and issued a Finding of No Significant Impact, as part of its request for a small take authorization. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammmal stocks. Based in part upon the comments received on this EA, NMFS hereby adopts the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. NMFS finds that the issuance of regulations and LOAs to the Air Force will not result in a significant environmental impact on the human environment and that it is unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments.

ESA

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC–4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haulout either on the Vandenberg coast or on the NCI during the 5-year period for this proposed authorization, the issuance of these regulations are unlikely to adversely affect listed marine mammals. Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

Changes From the Proposed Rule

NMFS has modified the final rule as follows:

(1) Based on an MMC recommendation, NMFS has rewritten § 216.120 to clarify the activity level being authorized.

(2) For clarification, § 216.125(f)(1) has been revised based on an MMC recommendation.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Until these regulations are effective, the 30th Space Wing, U.S. Air Force cannot be issued an LOA authorizing takings incidental to rocket, missile, aircraft, and helicopter operations. This places the 30th Space Wing in a position of potentially violating the MMPA should its activities result in the take of a marine mammal. Therefore, since these regulations relieve a restriction on the 30th Space Wing, under 5 U.S.C. 553(d)(1), they are not subject to a 30-day delay in effective date.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when this rule was proposed, that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. If implemented, this rule will affect only the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. As such, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection has been approved by OMB under control number 0648–0151. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 3 hours per response for requesting an authorization (as described in 50 CFR 216.104) and 40 hours per response for submitting reports, including the time for gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspects of the collection of information requirements to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart K is added to part 216 to read as follows:

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

Sec.

216.120 Specified activity and specified geographical region.
216.121 Effective dates.
216.122 Permissible methods of taking.
216.123 Prohibitions.
216.124 Mitigation.
216.125 Requirements for monitoring and reporting.
216.126 Applications for Letters of Authorization.
216.127 Renewal of Letters of Authorization.
216.128 Modifications of Letters of Authorization.

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

(1) Launching up to 10 Minuteman and Peacekeeper missiles each year from Vandenberg Air Force Base, for a total of up to 50 missiles over the 5-year authorization period,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches over the 5-year authorization period,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from March 1, 1999, through December 31, 2003.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

Notwithstanding takings authorized by § 216.120 and by a Letter of Authorization issued under § 216.106, no person in connection with the activities described in § 216.120 shall:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

§ 216.124 Mitigation.

(a) The activity identified in § 216.120(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haulouts and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, unless constrained by other factors including, but not limited to, human safety, national security or launch trajectories, in order to ensure minimum negligible impacts of launches on harbor seals and other pinnipeds, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of February through May.

(3) For Titan IV launches only, the holder of that Letter of Authorization must avoid launches, whenever possible, which predict a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to § 216.106 for activities described in § 216.120(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching,

(2) Monitor haulout sites on the Northern Channel Islands if it is determined that a sonic boom could impact those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(3) As required under a Letter of Authorization, investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(4) Supplement observations on Vandenberg and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season, and

(5) Conduct acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days

after each launch. This report must contain the following information:

(1) Date(s) and time(s) of the launch,

(2) Design of the monitoring program, and

(3) Results of the monitoring programs, including, but not necessarily limited to:

(i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,

(ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,

(iii) The length of time(s) pinnipeds remained off the haulout or rookery,

(iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and

(v) Behavioral modifications by pinnipeds noted that were likely the result of launch noise or the sonic boom.

(e) An annual report must be submitted that describes any incidental takings not reported under paragraph (d) of this section.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

(1) Summarize the activities undertaken and the results reported all previous reports,

(2) Assess the impacts at each of the major rookeries,

(3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and

(4) State the date(s) location(s) and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§ 216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant to these regulations, either the U.S. citizen (see definition at § 216.103) conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§ 216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under § 216.126 for the activity identified in § 216.120(a) will be renewed annually upon:

(a) Timely receipt of the reports required under § 216.125(d), which have been reviewed by the Assistant Administrator and determined to be acceptable;

(b) A determination that the mitigation measures required under § 216.124 and the Letter of Authorization have been undertaken; and

(c) A notice of issuance of a Letter of Authorization or a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.120(b) or that significantly and detrimentally alters the scheduling of launches, a Letter of Authorization issued pursuant to § 216.106 may be substantively modified without a prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 99–5009 Filed 2–26–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 121498A]

Magnuson-Stevens Act Provisions; Foreign Fishing; Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 1999 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 1999 groundfish fishery specifications and management measures for the Pacific Coast groundfish fishery, which were published in the **Federal Register** on January 8, 1999.

DATES: Effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kate King or Yvonne deReynier, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The 1999 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, were published in the **Federal Register** on January 8, 1999 (64 FR 1316). The specifications contained errors that need to be corrected.

Corrections

In rule FR Doc. 98–34851 beginning on page 1316, in the issue of Friday, January 8, 1999 (64 FR 1316), make the following corrections:

1. On page 1319, in footnote h/, in line 4, the extra ''by'' is removed.

2. On the same page, in footnote l/, in lines 1 and 3, ''1998'' is corrected to read ''1999''

3. On page 1320, in footnote t/, in line 2, insert ''ABC'' before ''which''.

The table as corrected appears below.

BILLING CODE 3510–22–P

Table 1. 1999 Specifications of Acceptable Biological Catch (ABC), Optimum Yields (OYs) (equivalent to Harvest Guidelines (HGs) in 1998), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) areas (in metric tons)

	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (called Harvest Guideline (HG) in 1998)		Commercial OY (total catch)	Allocations (total catch HGs)			
Species	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch ABC	Total Catch	Landed Equivalent		Limited Entry		Open Access	
										mt	%	mt	%
ROUNDFISH:													
Lingcod a/b/	450 U.S.		139	325	46	960	730	666	419	339	80.9	80	19.1
Pacific cod	3,200		c/			3,200	--	--	--	--	--	--	--
Pacific whiting a/d/	178,000-232,000 U.S. only					178,000-232,000	178,000-232,000	--	--	--	--	--	--
Sablefish e/	9,692				472	9,692 N	7,919 N	7,127	6,414 N	5,991	93.4	423	6.6
						472 S	472 S	425	425 S	--	--	--	--
(Jack mackerel f/)	(52,600)			--		(52,600)	(52,600)	(52,600)	--	--	--	--	--
FLATFISH:													
Dover sole g/	8,373				1,053	9,426	9,426	8,955	9,426	--	--	--	--
English sole	2,000		1,100			3,100	--	--	--	--	--	--	--
Petrale sole	1,200		500	800	200	2,700	--	--	--	--	--	--	--
Arrowtooth flounder	5,800					5,800	--	--	--	--	--	--	--
Other flatfish	700	3,000	1,700	1,800	500	7,700	--	--	--	--	--	--	--
ROCKFISH:													
Chilipepper h/	c/		3,724			3,724	3,724	3,724	3,651	2,461	67.4	1,190	32.6
POP i/	695		g/			695	595	500	595	--	--	--	--
Shortbelly	23,500					23,500	23,500	23,500	23,500	--	--	--	--
Splitnose j/	g/		868			868	868	729	868	--	--	--	--
Widow k/	5,750					5,750	5,023	3,962	4,981	4,797	96.3	184	3.7
Thornyheads: l/													--
Shortspine m/	1,261				175 -	1,261 N	1,150 N	805 N	1,150	1,147	99.75	3	0.25
						175 S	175 S	123 S	175	--	--	--	--
Longspine n/	4,102				429 -	4,102 N	4,102 N	3,733	4,102	--	--	--	--
						429 S	429 S	390 S	429	--	--	--	--

(Table 1. continued)

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)						OY (called Harvest Guideline (HG) in 1998)		Commercial OY (total catch)	Allocations (total catch HGs)			
	Vancouver a/	Columbia	Eureka	Monterey	Conception	Total Catch ABC	Total Catch	Landed Equivalent		Limited Entry		Open Access	
										mt	%	mt	%
Sebastes complex: a/o/	8,647		4,731			8,647 N	6,617	5,421	5,785	5,230	90.4N	555	9.6N
						4,731 S	2,705	2,705	1,396	941	67.4S	455	32.6S
Bocaccio-S p/	q/		230 *			230	230	230	150	101	67.4	49	32.6
Canary-N r/	1,045 *		q/			1,045	857	689	807	736	91.2	71	8.80
Yellowtail-N a/s/	3,465 U.S. *		q/			3,465	3,435	2,407	3,403	3,076	90.4	327	9.6
REMAINING ROCKFISH q/:	2,295 *		898 *			--	--	--	--	--	--	--	--
bank	c/		81 ✓			81	--	--	--	--	--	--	--
blackgill t/	c/				365 ✓	365	--	--	--	--	--	--	--
bocaccio-N	424 ✓		u/			424	--	--	--	--	--	--	--
canary-S	u/		85 ✓			85	--	--	--	--	--	--	--
darkblotched	209 ✓		47 ✓			256	--	--	--	--	--	--	--
POP-S	u/		20 ✓			20	--	--	--	--	--	--	--
redstripe	768 ✓		c/			768	--	--	--	--	--	--	--
sharpchin	398 ✓		71 ✓			469	--	--	--	--	--	--	--
silvergrey	51 ✓		c/			51	--	--	--	--	--	--	--
splitnose	274 ✓		u/			274	--	--	--	--	--	--	--
yelloweye	39 ✓		c/			39	--	--	--	--	--	--	--
yellowmouth	132 ✓		c/			132	--	--	--	--	--	--	--
yellowtail-S	u/		74 ✓	155 ✓		229	--	--	--	--	--	--	--
Other rockfish v/	1,842 *		3,603 *			--	--	--	--	--	--	--	--
OTHER FISH w/	2,500	7,000	1,200	2,000	2,000	14,700	--	--	--	--	--	--	--

a/ U.S. Vancouver only, even if stock assessments included parts of Canadian waters.

b/ Lingcod. The 419-mt commercial OY for lingcod is in terms of total catch and is derived by reducing the 730-mt OY by 310 mt for the recreational fishery and 1 mt for the treaty tribes. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 339 mt (total catch) is reduced by 19% (64 mt) to derive a landed catch equivalent of 275 mt. Discard estimates for the open access fishery are not available at this time. The 666-mt landed catch equivalent for OY is the sum of the recreational and tribal catch (311 mt) plus the landed catch equivalents for the limited entry (275 mt) and open access fisheries (80 mt).

c/ Other. These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted, and rockfish species are included in the "other rockfish" category for the areas footnoted only.

d/ Pacific whiting. Preliminary ABC and OY. Assumes 80% of U.S. plus Canada biomass occurs in U.S. waters.

e/ Sablefish north of 36° N. lat. The landed catch equivalent for the 7,919 mt OY is 7,127 mt, and assumes that 10 percent (792 mt)

of the OY is discarded. Ten percent (713 mt) of the landed catch equivalent is set aside for the treaty tribes. The remaining 6,414 mt is the "commercial OY," which is divided between the limited entry (5,991 mt) and open-access (423 mt) fisheries. The limited entry allocation is further allocated 58 percent (3,475 mt) to the trawl fishery, and 42 percent (2,516 mt) to the nontrawl fishery. The allocations are harvest guidelines.

f/ Jack mackerel north of 39°00' N. lat. The ABC and OY include waters beyond 200 nm.

g/ Dover sole. The 8,955-mt landed catch equivalent for OY assumes that 5 percent of the total catch is discarded.

h/ Chilipepper. Chilipepper in the Eureka, Monterey, and Conception areas is pulled out of the Sebastes complex in 1999, and for the first time, an OY (and limited entry and open access allocations) is specified for chilipepper. The 3,651-mt commercial OY for chilipepper is in terms of total catch and is derived by reducing the 3,724-mt OY by 73 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. Zero discards are assumed in the limited entry and open access fisheries, so the limited entry and open access allocations also represent the landed catch equivalents.

i/ Pacific ocean perch. The 500-mt landed catch equivalent for OY assumes that 16 percent of the total catch is discarded.

j/ Splitnose rockfish. Splitnose rockfish also have been removed from the Sebastes complex in the Eureka, Monterey, and Conception areas. The 729-mt landed catch equivalent for OY assumes that 16 percent of the total catch is discarded.

k/ Widow rockfish. The 4,981-mt commercial OY for widow rockfish is in terms of total catch and is derived by reducing the 5,023-mt OY by 42 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 4,797 mt (total catch) is reduced by 300 mt for estimated bycatch in the offshore whiting fishery, and the remainder is reduced by 16% (719 mt) to derive a landed catch equivalent of 3,777 mt. Discard estimates for the open access fishery are not available at this time. The 3,962-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (3,777 mt) and open access fisheries (184 mt), but excludes recreational landings of 42 mt.

l/ Thornyheads. The treaty tribes estimate that 8,000-10,000 lb (about 3-4 mt) of thornyheads will be taken in 1999 under a tribal trip limit of 300 lb per trip. This small amount is not subtracted from either of the thornyhead HGs at this time. There is no combined HG for both species in 1999.

m/ Shortspine thornyheads. The commercial OY for shortspine thornyheads equals the OY. The open access allocation for shortspine thornyheads is determined by applying the open access percentage to the 1,150-mt commercial OY. The limited entry allocation is determined by subtracting the open access allocation (3 mt) from the commercial OY. The limited entry allocation of 1,147 mt (total catch) is reduced by 30% (344 mt) to derive a landed catch equivalent of 803 mt. The 805-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (803 mt) and open access fisheries (3 mt)(with a slight difference due to rounding).

n/ Longspine thornyheads. The 4,102-mt landed catch equivalent for OY assumes that 9% of the total catch is discarded.

o/ Sebastes complex. The Sebastes-north ABC of 8,647 mt is the sum of the ABCs for canary, yellowtail, "remaining rockfish," and "other rockfish" in the U.S. Vancouver and Columbia areas (marked with *). All Sebastes OYs are for total catch. Species in "remaining rockfish" are marked with ✓. There may be some discrepancies with other tables due to rounding.

The Sebastes-north OY of 6,617 mt (for the Vancouver-Columbia area) is the sum of 75% of the ABC for "remaining rockfish" excluding bocaccio (.75 x (2,295-424)) = 1,403 mt)plus 50% of the ABCs for "other rockfish" (.5 x 1,842 = 921 mt) plus the OYs for canary (857 mt) and yellowtail rockfish (3,435 mt). The reductions in the contributions of remaining and other rockfish is intended to address uncertainty in stock status due to limited information. Bocaccio is not included because the fishery will be managed so as to minimize harvest of this species.

Within the Sebastes-north OY are two small HGs for commercial harvest of black rockfish by the Makah, Quileute, Hoh, and Quinault Indian tribes: 20,000 lb (9,072 kg) for the EEZ north of Cape Alava (48°09'30" N. lat.) and 10,000 lb (4,536 kg) between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), which totals 13.6 mt. The northern OY for the Sebastes complex is reduced by 13.6 mt for tribal fisheries and 265 mt for estimated recreational harvest to derive the 6,778 mt commercial OY.

The Sebastes-south ABC is the sum of the ABCs for bocaccio, "remaining rockfish," and "other rockfish" in the Eureka, Monterey, and Conception areas (marked with *). There may be some discrepancies with other tables due to rounding.

The Sebastes-south OY, which applies to the Eureka/Monterey/Conception area, is the OY for bocaccio (230 mt) plus the sum of 75% of the ABC for remaining rockfish (.75 x 898) plus 50% of the ABC for other rockfish (.5 x 3,603 = 1,801 mt). The reductions in the

contributions of remaining and other rockfish is intended to address uncertainty in stock status due to limited information.

p/ Bocaccio. The 150-mt commercial OY for bocaccio in the Eureka, Monterey, and Conception area is in terms of total catch and is derived by reducing the 230-mt OY by 80 mt for the recreational fishery. No discards are assumed at this time.

q/ Remaining rockfish. Prior to 1997, this category included all species in the Sebastes complex that did not have an individual ABC, and therefore included species that, starting in 1997, are designated as "other rockfish." Since 1997, "remaining rockfish" includes only those species and areas listed in Table 1. Species included in "remaining rockfish" are marked with ✓.

r/ Canary. The 807-mt commercial OY for canary rockfish in the Vancouver-Columbia area is in terms of total catch and is derived by reducing the 1,045-mt OY by 50 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 736 mt (total catch) is reduced by a 16% (118 mt) discard estimate to derive a landed catch equivalent of 618 mt. Discard estimates for the open access fishery are not available at this time. The 689-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (618 mt) and open access fisheries (71 mt).

s/ Yellowtail rockfish. The 3,403-mt commercial OY for yellowtail rockfish is in terms of total catch and is derived by reducing the 3,435-mt OY by 32 mt for the recreational fishery. The open access allocation is determined by applying the open access percentage to the commercial OY. The limited entry allocation is determined by subtracting the open access allocation from the commercial OY. The limited entry allocation of 3,076 mt (total catch) is reduced by 600 mt for estimated bycatch in the offshore whiting fishery, and the remainder is reduced by 16% (396 mt) to derive a landed catch equivalent of 2,080 mt. Discard estimates for the open access fishery are not available at this time. The 2,407-mt landed catch equivalent for OY is the sum of the landed catch equivalents for the limited entry (2,080 mt) and open access fisheries (327 mt).

t/ Blackgill rockfish. This stock is moved from "other rockfish" to "remaining rockfish," both components of the Sebastes complex. A separate ABC is established for the first time in 1999 for blackgill rockfish, resulting in a 365-mt ABC which therefore reduces the ABC for "other rockfish" by 365 mt and increases it by the same amount for "remaining rockfish."

u/ There is a separate ABC for this species and area which is not included in "remaining rockfish" or "other rockfish," and therefore is not included in the Sebastes complex.

v/ Other rockfish. "Other rockfish" includes offshore Sebastes species not identified in Table 1. It is based on the 1996 Sebastes complex assessment of commercial landings and includes updated estimates of recreational landings for those species without individual ABCs.

w/ Other fish. Includes sharks, skates, rays, ratfish, morids, grenadiers, and other groundfish species noted above in footnote c/.

BILLING CODE 3510–22–C

4. On page 1323, in the first column, in line 1, under *Chilipepper*, insert ''was'' before ''conducted''.

5. On page 1327, in the first column, in the second complete paragraph, in line 11, insert ''is'' after ''discard''.

6. On page 1332, in the first column, in line 1, ''processing'' should read ''processor''.

7. On page 1333, in the second column, in paragraph A. (1)(b), in line 5, ''landing'' should read ''landings''.

8. On page 1338, in the second column, under the heading *''C. Trip Limits in the Open Access Fishery''*, in line 1, insert ''is gear'' before ''used'' and in line 3, insert ''limited entry'' before ''permit''.

Dated: February 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5008 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 021999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the interim total allowable catch (TAC) of Pacific cod in that area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(6)(iii), the Interim 1999 Harvest Specifications for Groundfish (64 FR 46, January 4, 1999), established the allowance of the interim 1999 Pacific cod TAC apportioned for vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA as 834 metric tons (mt).

NMFS closed the offshore component fishery for Pacific cod in the Central Regulatory Area to directed fishing under § 679.20(d)(1)(iii) on January 20, 1999 (64 FR 3658, January 25, 1999).

NMFS has determined that as of February 18, 1999, approximately 500 mt remain in the offshore component directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5018 Filed 2–24–99; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 022399B]

Fisheries of the Exclusive Economic Zone Off Alaska; Vessels Greater Than 99 feet (30.2 m) LOA Catching Pollock for Processing by the Inshore Component in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels greater than 99 feet (30.2 m) length over all (LOA) catching pollock for processing by the inshore component in the critical habitat/catcher vessel operation area (CH/CVOA) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the A2 season limit of pollock total allowable catch specified for the inshore component within the CH/CVOA will be reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 24, 1999, until 1200 hrs, A.l.t., August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(*1*), and the revised interim 1999 TAC amounts for pollock in the Bering Sea subarea (64 FR 3437, January 22, 1999), the A2 season limit of pollock total allowable catch specified for the inshore component for harvest within the CH/CVOA is 36,716 metric tons (mt).

In accordance with § 679.22(a)(11)(iv)(A) and (C)(*2*) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A2 season limit of pollock total allowable catch specified to the inshore component for harvest

within the CH/CVOA will be reached. The Regional Administrator has estimated that 1,000 mt is likely to be harvested by catcher vessels less than or equal to 99 feet (30.2 m) LOA during the remainder of the A2 season and is reserving that amount to accommodate fishing by such vessels after the closure of the CH/CVOA to vessels greater than 99 feet (30.2 m) LOA.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels greater than 99 feet (30.2 m) LOA catching pollock for processing by the inshore component within the CH/CVOA conservation zone, as defined at § 679.22(a)(11)(iv)(B).

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the A2 season limit of pollock total allowable catch specified to the inshore component for harvest within the CH/CVOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in noncompliance with reasonable and prudent management measures implemented to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 24, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5017 Filed 2–24–99; 4:08 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 39
Monday, March 1, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–127–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. The proposed AD would require replacing the passenger oxygen container and mask assembly with an improved design passenger oxygen container and mask assembly. The proposed AD is the result of an incident where a passenger had put on the oxygen mask and the lanyard pin did not automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight. The actions specified by the proposed AD are intended to prevent the above situation from occurring on other airplanes, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner.

DATES: Comments must be received on or before April 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–127–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 the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket No. 98–CE–127–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–127–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of an incident where the lanyard pin did not automatically pull and initiate oxygen flow when a passenger of a Raytheon Model 1900D airplane put on the oxygen mask, part number (P/N) 129–384005–3. The incident occurred during a loss of airplane pressurization while in-flight. The lanyard is attached to the oxygen mask at one end and to the pin that initiates the oxygen flow at the other end. The FAA has determined that excess length of the lanyard was the cause of the above-referenced incident.

The affected oxygen masks are incorporated on Raytheon Model 1900D airplanes, serial numbers UE–1 through UE–338.

This condition, if not corrected, could result in passenger injury if the lanyard pin was not manually pulled in a timely manner.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin SB 35–3233, Issued: December, 1998, which specifies replacing the existing passenger oxygen container and mask assembly, part number (P/N) 129–384005–3, with an improved design passenger oxygen container and mask assembly, P/N 129–384005–5. This replacement is accomplished by incorporating Puritan Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions.

The FAA’s Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the oxygen mask lanyard pin to automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model 1900D airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require replacing the existing passenger oxygen container and mask assembly, P/N 129–384005–3, with an improved design passenger oxygen container and mask assembly, P/N 129–384005–5. The proposed

replacement would be accomplished by incorporating Puritan Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions.

Differences Between the Service Information and the Proposed AD

The compliance time presented in Raytheon Service Bulletin SB 35–3233, Issued: December, 1998, is ''as soon as possible after receipt of this Service Bulletin, but no later than 600 hours after receipt of this Service Bulletin.'' The FAA concurs that the action should be accomplished as soon as possible, but has no way of enforcing this compliance time. The FAA also assumes that what Raytheon means by ''600 hours after receipt of this Service Bulletin'' is 600 hours time-in-service (TIS).

In order to assure that the replacement required by the proposed AD is accomplished within a reasonable period of time without inadvertently grounding the affected airplanes, the FAA is proposing a compliance time of ''within the next 200 hours TIS after the effective date of this AD.''

Cost Impact

The FAA estimates that 300 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost to the owners/operators of the affected airplanes. Based on the figures presented above, the total cost impact of the proposed AD on U.S. operators is estimated to be $72,000, or $240 per airplane.

Raytheon is also offering warranty credit for labor, as well as parts, provided that all paperwork is submitted no later than December 31, 1999.

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:

Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation): Docket No. 98–CE–127–AD.

Applicability: Model 1900D airplanes, serial numbers UE–1 through UE–338, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD after the effective date of this AD, unless already accomplished.

To prevent failure of the oxygen mask lanyard pin to automatically pull and initiate oxygen flow during a loss of airplane pressurization while in-flight, which could result in passenger injury if the lanyard pin is not manually pulled in a timely manner, accomplish the following:

(a) Within the next 200 hours time-in-service after the effective date of this AD, replace the passenger oxygen container and mask assembly, part number 129–384005–3 (or FAA-approved equivalent part number), with an improved design passenger oxygen container and mask assembly, part number 129–384005–5 (or FAA-approved equivalent part number). Accomplish this replacement by incorporating Puritan Bennett Kit No. 280041–00: Lanyard Retrofit Drop Out Box, which contains all the necessary parts and instructions. This kit is referenced in Raytheon Mandatory Service Bulletin SB 35–3233, Issued: December, 1998.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a passenger oxygen container and mask assembly that is not of an improved design, part number 129–384005–5 (or FAA-approved equivalent part number).

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 22, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–4891 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–1]

RIN 2120–AA66

Proposed Modification of the San Francisco Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to modify the San Francisco, CA, Class B airspace area. Specifically, this action proposes to raise the ceiling of the airspace area from 8,000 to 10,000 feet mean sea level (MSL); reconfigure several existing areas; create several new areas; and raise and/or lower the floors of existing areas. The FAA is proposing this action to improve the management of air traffic operations, enhance safety, and reduce the potential for midair collision, in the San Francisco Class B airspace area while accommodating the concerns of airspace users.

DATES: Comments must be received on or before April 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 97–AWA–1, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent to the following Internet address: 9–NPRM–CMTS@faa.dot.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Joseph White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWA–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1161), using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s webpage at http://www.access.gpo.gov/nara/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 nautical miles (NM) of any designated TCA primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published, in the **Federal Register**, the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in the remainder of this NPRM.

Background

The TCA program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to safely accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport extending to 10, 20, and 30 NM, respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the

surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

As announced in the **Federal Register** on July 22, 1996 (61 FR 37957), pre-NPRM informal airspace meetings were held in 1996 on September 4 and 23 in San Jose, CA; September 10 in Concord, CA; September 17 at the Alameda Coast Guard Station, Alameda, CA; and September 24 in Petaluma, CA. The purpose of these meetings was to provide local airspace users an opportunity to present input on the planned modifications of the San Francisco Class B airspace area, and the Metropolitan Oakland, CA, and San Jose, CA, Class C airspace areas. After further internal FAA review, and in response to input received from the airspace user community, the planned changes for Metropolitan Oakland and San Jose Class C airspace areas were withdrawn from this effort.

As a result of the above informal airspace meetings, the FAA received verbal and written comments from several interested parties. All comments received during the informal airspace meetings and the subsequent comment period were considered and/or incorporated into this notice of proposed modification. Verbal and written comments received by the FAA, and the agency's responses, are summarized below.

Analysis of Comments

One commenter, from the Coalition for Responsible Airport Management and Policy, expressed nonsupport for the planned modification to the San Francisco Class B airspace area. The commenter stated that the planned modification would further restrict GA and does not contain sufficient geographical landmarks to support GA operations.

The FAA agrees that identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR in assisting them with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design and this proposed modification, consideration was given to using Very High Frequency Omnidirectional Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks whenever possible. Since November 1991, the Northern California Airspace Users Working Group (NCAUWG) has been an integral part of the ongoing effort to develop recommendations to modify the San Francisco Class B airspace area. The proposed airspace modification offers several routes and options for GA operators to transit the San Francisco area without requiring entry into Class B airspace. Additional geographic landmarks have been recently identified by the NCAUWG in a proposal to publish VFR flyways on the San Francisco VFR Terminal Area Chart. Although outside the scope of this NPRM, the FAA looks forward to publishing VFR flyways with the additional geographical landmarks shortly after San Francisco Class B airspace area modification decisions have been finalized.

Several commenters recommended that the ceiling of the San Francisco Class B airspace area remain at 8,000 feet MSL. They believe that the current 8,000 feet MSL ceiling is high enough to contain operations.

The FAA does not agree with this recommendation. Currently, 90 percent of aircraft arriving and departing the San Francisco International Airport operate between 8,000 and 10,000 feet MSL. Aircraft operations at San Francisco International Airport are forecast to continue the trend of steadily increasing in response to the transportation needs of local citizens. The FAA believes that raising the ceiling to 10,000 feet MSL is necessary to protect the instrument procedures flight tracks during critical climb and descent profiles. A higher level of overall safety is the key objective. A survey conducted by the Bay Terminal Radar Approach Control facility in August and September of 1996 revealed that this modification, as proposed, would effect only a very small number of aircraft operating under VFR.

Some commenters suggested that the airspace in the vicinity of Mt. Diablo be excluded from the San Francisco Class B airspace area to provide for soaring activity over Mt. Diablo.

The FAA agrees with this recommendation. The proposed airspace modification has been amended in response to comments received. This proposed modification to the San Francisco Class B airspace area excludes airspace in the vicinity of Mt. Diablo.

A few commenters recommended that the Sunol Gap area to the east, commonly referred to local users as the ''keyhole,'' continue to be excluded from the San Francisco Class B airspace area because they felt the proposed change was restrictive and unnecessary.

The FAA does not agree with this recommendation. Currently, several IFR arrival transition areas/routes traverse this ''keyhole'' area. These routes enter the San Francisco Class B airspace area from the northeast, east, and southeast, and exit via departure transition areas/routes to the east and southeast. The proposed reconfiguration of the San Francisco Class B airspace area to the east of San Francisco would support the normal flow of traffic from the east and northeast into and out of San Francisco International Airport, Hayward Air Terminal, and Metropolitan Oakland Airport. Additionally, when the San Francisco International Airport is operating in an east departure configuration, the proposed Class B airspace within Areas J, K, and M provides Class B coverage for jet departure climb profiles to the east.

Several commenters recommended that VFR routes, corridors, or flyways be identified for entry into and/or through the San Francisco Class B airspace area.

The FAA agrees with these commenters and plans to initiate publication of VFR flyways after the Class B airspace area modification decisions are finalized. This sequence of actions is necessary in order to ensure that published VFR flyways are correctly placed for navigation around the Class B airspace area.

Several commenters recommended that the floor of the San Francisco Class B airspace area in the vicinity of Mt. Tamalpais be made higher than the planned 4,000 feet MSL because they believed the current floor at 4,500 feet was adequate for existing operations.

The FAA does not agree with this recommendation. Presently, IFR arrivals from the northwest predominantly traverse this area in descent for landing at San Francisco International Airport. After a thorough review, the FAA has determined that, due to the continuing increase in aircraft operations, lowering the floor from 4,500 feet to 4,000 feet MSL is necessary in order to adequately contain the flow of air traffic. The proposal to reconfigure this area will generate benefits in the form of enhanced aviation safety and operational efficiency for air carriers and other aircraft operators that arrive and depart the San Francisco International Airport Runways 10 and 19 from the north.

Several commenters expressed concern that the floor of Area F at 2,100 feet MSL is too low.

The FAA does not agree. It should be noted that this action does not propose to reconfigure or modify Area F. The current floor of Area F was established at 2,100 feet MSL to support San Francisco jet departure operations as they transition from the surface to

selected routes. Additionally, Area F allows IFR arrival traffic from the north and southwest to transition from the en route environment in uniform descent to San Francisco International Airport.

One commenter expressed concern that the extension of the Class B airspace area to the west would impede GA aircraft operations along Federal VOR Airway 27 (V–27).

The FAA disagrees with this comment. The choice to navigate along V–27 and still avoid Class B airspace would remain a viable option for aircraft operating underneath Area E below the unchanged 6,000 feet MSL floor currently established.

Several commenters expressed concern regarding adequate ATC staffing to provide Class B services in the proposed expanded areas.

The FAA has determined this proposed modification of the San Francisco Class B airspace area will not require an increase of personnel to provide ATC services.

Other Public Meetings

Due to the fact that the informal airspace meetings were held in 1996, the FAA will conduct additional public meetings on this proposal. The dates and times of these meetings will be announced in the **Federal Register**.

The Proposal

The FAA proposes to amend 14 CFR part 71 by modifying the San Francisco Class B airspace area. Specifically, this proposal (as depicted on the attached chart) would raise the ceiling from 8,000 to 10,000 feet MSL; reconfigure several existing areas; create several new areas; and raise and/or lower the floors in existing areas. The FAA is proposing this action to enhance safety, reduce the potential for midair collision, and better manage air traffic operations into, out of, and through the San Francisco Class B airspace area, while accommodating the concerns of airspace users.

Area A. In the reconfiguration of Area A (that area beginning at the surface up to 10,000 feet MSL), the FAA proposes to modify a portion of its southwest boundary from 5 to 6 NM between the San Francisco VOR/DME 137° and 247° radials. The FAA believes modification of Area A would provide additional protected airspace for the critical aircraft operations of landing or takeoff; for low altitude aircraft operations navigating from the north off the Point Reyes VORTAC and into San Francisco International Airport or Oakland Airport from the west; and for radar vectors issued by ATC to parallel Runways 1 and 28. In addition, when the San Francisco International Airport is in a southern configuration, the proposed modification of the 1 NM of airspace to the south and southwest would ensure turboprop as well as other aircraft operations are contained within the San Francisco Class B airspace area during critical phases of flight.

Areas B and C. No lateral changes have been made to the existing Areas B or C boundaries.

Area D. The FAA believes expansion of Area D westward to the San Francisco VOR/DME 247° radial is necessary for better protection of oceanic and southern California jet arrival descent profiles. The FAA proposes to relocate the portion of the existing western boundary of Area D which extends between 5 and 15 NM from the San Francisco VOR/DME; delete the entire current southeast boundary of the Existing Area J; and expand Area D westward to establish the new western boundary of Area D along the existing San Francisco VOR/DME 247° radial between 6 and 15 NM. From that point the FAA proposes to establish the southern boundary of Area D counterclockwise along the San Francisco VOR/DME 15 NM arc to the San Francisco VOR/DME 167° radial. The floor in this reconfigured area, as proposed, would be lowered from 6,000 feet MSL and merged with the existing floor of 4,000 feet MSL. In addition, as proposed in this modification, the existing Area J with a floor of 5,000 feet MSL, located southwest of the San Francisco International Airport in the vicinity of Half Moon Bay Airport, would be incorporated into the reconfigured Area D, lowered and merged with the existing floor of 4,000 feet MSL. The floor proposed at 4,000 feet MSL would support arrival turboprop and other aircraft operations transiting in descent into the San Francisco International Airport from ocean points west and from southern California. The FAA believes there will be little, if any, impact to GA operators, and/or other users of the airspace created by lowering the floor to 4,000 feet MSL in the vicinities of Half Moon Bay Airport, east of El Granda, and northwest of the Woodside VORTAC, as approximately half of the reconfigured Area D will be over water. The San Francisco VFR Terminal Area Chart produced by the National Oceanic and Atmospheric Administration depicts rising terrain contours in the reconfigured area from sea level to approximately 1,500 feet, with one spot elevation exceeding 1,900 feet. The FAA believes there is adequate maneuvering airspace for aircraft operators or others who elect to operate in this area below the 4,000-foot floor of the Class B airspace area. Additionally, pilots, have the option of circumnavigating outside of the San Francisco VOR/DME 15 NM arc and operating under the higher floor of 6,000 feet MSL, or using standard procedures to enter the Class B airspace area.

Area E. The FAA proposes to reconfigure Area E westward. The existing westernmost boundary of Area E, currently described as the Point Reyes 161° radial, would be relocated approximately 10 NM westward. Thence as proposed: bounded on its northern end by the San Francisco VOR/DME 277° radial; its western border, the Point Reyes 178° radial until intercepting the San Francisco VOR/DME 227° radial; on the southern end bounded by the San Francisco VOR/DME 227° radial between 25 and 30 NM and the extended San Francisco VOR/DME 20 NM arc. Expanding this area west would support arrival and departure turboprop aircraft and other aircraft operations transiting in descent from the en route structure into the San Francisco International Airport from ocean points west of San Francisco and from southern California area. This proposed expansion to the west would enhance safety in the form of better management of aircraft operations. In addition, as most of the west expansion is over water and the floor, as proposed, established at 6,000 feet MSL, the FAA believes there will be little if any impact to GA operations.

Area F. No lateral change has been made to the existing Area F boundary.

Area G. Area G extends the San Francisco VOR/DME 15 NM arc counterclockwise until it adjoins the San Francisco VOR/DME 277° radial.

Area H. The FAA proposes to extend Area H to the west uniformly along the respective 15 and 20 NM arcs until they intercept the San Francisco VOR/DME 277° radial. In addition, the FAA proposes to lower the existing floor of Area H from 4,500 to 4,000 feet MSL to provide additional protected airspace for west departures and southeast arrivals into and out of the San Francisco International Airport.

Area I. The FAA proposes to extend Area I uniformly along the respective 20 and 25 NM arcs until they intercept the San Francisco VOR/DME 277° radial. This reconfiguration would provide protected airspace for aircraft operations that transition to and from the en route structure.

Area J. The FAA believes that the proposed establishment of Area J to the east of San Francisco International Airport would provide additional protected airspace for IFR aircraft arriving from the east in the vicinity of

the SUNOL intersection. The FAA proposes to reclassify that portion of existing Class E airspace to Class B airspace by establishing Area J in the vicinity of Decoto, CA. In this proposal, Area J would be bounded by the San Francisco VOR/DME 067° and 107° radials along the 15 and 20 NM arcs of the San Francisco VOR/DME, with the floor established at 3,500 feet MSL. Establishment of Area J would enhance the protection of aircraft operations into the San Francisco International Airport. The proposed creation of Area J and the reclassification of the airspace in the vicinity of Decoto, CA, may lead some GA operators to consider alternate routes of flight. However, the FAA believes this will not hinder GA operations unduly, and, for those pilots who choose not to circumnavigate or traverse below the Class B airspace area, standard procedures may be used to enter the San Francisco Class B airspace area.

Area K. No lateral change has been made to the existing Area K boundary.

Area L. The FAA believes that the establishment of Area L to the east of the San Francisco International Airport would provide additional protected airspace for those aircraft arriving from the east over the congested CEDES intersection. The FAA proposes to reclassify that portion of existing Class E airspace in the vicinity of Sunol, CA, to Class B airspace by establishing Area L. As proposed, Area L would be bounded by the San Francisco VOR/DME 067° and 107° radials along the 20 and 25 NM arcs of the San Francisco VOR/DME, with the floor established at 5,000 feet MSL. Establishment of this area would enhance the safety of aircraft operations by providing additional protected airspace for IFR arrival traffic operations in transition from the CEDES intersection and vicinity, into San Francisco, Oakland, and Hayward Airports. The 5,000-foot floor would allow adequate room for aircraft operators to choose transiting either below or around the Class B airspace area, or to use standard procedures for entry into the San Francisco Class B airspace area.

Area M. The FAA proposes to establish Area M between the San Francisco VOR/DME 067° and 227° radials, and between the San Francisco VOR/DME 25–30 NM arcs, with a floor of 8,000 feet MSL. The FAA believes establishment of Area M would provide additional protected airspace for arrival and departure operations into and out of the San Francisco International Airport, enhance safety, and aid traffic management in the separation of arrival and departure aircraft.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its negligible costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

The FAA proposes to modify the San Francisco Class B airspace area by raising the ceiling from 8,000 feet MSL to 10,000 feet MSL, by extending the lateral boundaries of several existing areas, by establishing several new areas, and by modifying base altitudes. This action would increase the overall size of the Class B airspace area thereby increasing the ability of ATC to manage and control air traffic complexity in the San Francisco area. The FAA contends that this proposal would improve operational efficiency and enhance aviation safety in the proposed Class B airspace area. The proposed modifications would also include clearer boundaries defining the Class B airspace subareas.

The proposed rule would impose negligible costs on the FAA or airspace users. Printing of aeronautical charts which reflect the changes to the Class B airspace would be accomplished during a scheduled chart printing, and would result in no additional costs for plate modification and updating of charts. Notices would be sent to pilots within a 100-mile radius of San Francisco International Airport at a total cost of $200.00 for postage. No staffing changes would be required to maintain the modified Class B airspace area.

The FAA contends that the proposed rule would not impose any additional costs on general aviation aircraft operators. Since the proposed San Francisco Class B airspace area would reside within the existing Mode C Veil, no additional avionics equipment would be required for an aircraft operating in the vicinity of the Class B airspace area. Even with the establishment of new subareas and the expansion of existing subareas, VFR aircraft operators should not have difficulty circumnavigating the Class B airspace area. There is adequate room for these aircraft users who elect to operate below the floors of the San Francisco Class B airspace area.

In view of the negligible cost of compliance, enhanced safety, and operational efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis

for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would have a minimal impact on small entities. This determination is based on the premise that potentially impacted aircraft operators regularly fly into airports where radar approach control services have been established such as the San Francisco Class B airspace area. These operators already have the required equipment, and, therefore, there would be no additional cost to these entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71–DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Francisco, CA

San Francisco International (SFO) Airport (Primary Airport)
(lat. 37°37′09″ N., long. 122°22′30″ W.)
San Francisco (SFO) VOR/DME
(lat. 37°37′10″ N., long. 122°22′26″ W.)
Oakland (OAK) VORTAC
(lat. 37°43′33″ N., long. 122°13′25″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius arc of the SFO VOR/DME extending clockwise from the SFO VOR/DME 247° radial to the SFO VOR/DME 127° radial, excluding that airspace west of the Pacific coast shoreline (Area K), and excluding that airspace within a 3-mile radius of the OAK VORTAC, thence northwest along the 127° radial to the 5 NM radius of the SFO VOR/DME, thence clockwise along the 5 NM radius to the SFO VOR/DME 167° radial, thence southeast along the 167° radial to the 6 NM radius of the SFO VOR/DME, thence clockwise along the 6 NM radius to the SFO VOR/DME 247° radial, to the point of the beginning.

Area B. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL beginning at the intersection of the SFO VOR/DME 7 NM radius and the SFO VOR/DME 107° radial, thence clockwise along the 7 NM radius to the SFO VOR/DME 127° radial, thence northwest along the 127° radial to the 5 NM radius of the SFO VOR/DME, thence clockwise along the 5 NM radius to the SFO VOR/DME 137° radial, thence southeast along the 137° radial to the SFO VOR/DME 10 NM radius, thence counterclockwise along the 10 NM radius to the SFO VOR/DME 107° radial, thence northwest along the 107° radial, to the point of the beginning.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by the SFO VOR/DME on the northwest by the 10-mile radius arc, and on the southeast by a 15-mile radius arc, on the northeast by the SFO VOR/DME 214° radial, and on the southwest by the SFO VOR/DME 154° radial.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 5-mile DME point and the intersection of the SFO VOR/DME 137° radial thence southeast along the 137° radial to and counterclockwise along a 15-mile DME arc of the SFO VOR/DME; to and east along the SFO VOR/DME 107° radial; to and clockwise along the 20-mile radius DME arc of the SFO VOR/DME; to and northwest along the SFO VOR/DME 167° radial; to and counterclockwise along the 15-mile radius DME arc of the SFO VOR/DME; to and northeast along the SFO VOR/DME 247; to and counterclockwise along the SFO VOR/DME 6-mile radius; to and northwest along the SFO VOR/DME 167°; to and counterclockwise along the SFO VOR/DME 5-mile radius to the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 5-mile DME point on the SFO VOR/DME 167° radial thence southeast along the 167° radial to and counterclockwise along the 20-mile DME arc of the SFO VOR/DME to and east along the SFO VOR/DME 107° radial to and clockwise along the 25-mile DME arc of the SFO VOR/DME to and southwest along the SFO VOR/DME 227°, to and northwest along the PYE VORTAC 178° radial; to and east along the SFO VOR/DME 277° radial; to and counterclockwise along the SFO VOR/DME 15-mile radius to the point of beginning.

Area F. That airspace extending upward from 2,100 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 10-mile DME point on the SFO VOR/DME 247° radial thence clockwise along the 10-mile DME arc to and west along the SFO VOR/DME 107° radial to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and clockwise along the 3-mile DME arc of the OAK VORTAC to and counterclockwise along the 7-mile DME arc of the SFO VOR/DME to and southwest along the SFO VOR/DME 247° radial to the point of beginning.

Area G. That airspace extending upward from 3,000 feet MSL to and including 10,000

feet MSL bounded by a line beginning at the 10-mile DME point on the SFO VOR/DME 247° radial thence clockwise along the 10-mile DME arc to and east along the SFO VOR/DME 107° radial to and counterclockwise along the 15-mile DME arc of the SFO VOR/DME; to and northeast along the SFO VOR/DME 247° radial to the point of beginning.

Area H. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the SFO VOR/DME 15-mile DME point on the SFO VOR/DME 067° radial, thence counterclockwise along the 15-mile DME arc of the SFO VOR/DME; to and west along the SFO VOR/DME 277° radial; to and clockwise along the SFO VOR/DME 20-mile radius; to and southwest along the SFO VOR/DME 067° radial to the point of beginning.

Area I. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the SFO VOR/DME 20-mile DME point on the SFO VOR/DME 067° radial; thence counterclockwise along the 20-mile DME arc of the SFO VOR/DME; to and west along the SFO VOR/DME 277° radial; to and clockwise along the SFO VOR/DME 25-mile radius; to and southwest along the SFO VOR/DME 067° radial to the point of the beginning.

Area J. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the SFO VOR/DME 15-mile DME point on the SFO VOR/DME 067° radial; to and clockwise along the 20-mile DME arc of the SFO VOR/DME; to and west along the SFO VOR/DME 107° radial; to and counterclockwise along the SFO VOR/DME 15-mile radius; to the point of the beginning.

Area K. That airspace extending upward from 1,500 feet MSL to and including 10,000 feet MSL bounded on the west by a 7-mile radius arc of the SFO VOR/DME and on the east by the Pacific coast shoreline.

Area L. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the SFO VOR/DME 20-mile DME point on the SFO VOR/DME 067° radial; to and clockwise along the 25-mile DME arc of the SFO VOR/DME; to and west along the SFO VOR/DME 107° radial; to and counterclockwise along the SFO VOR/DME 20-mile radius; to the point of the beginning.

Area M. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the SFO VOR/DME 25-mile DME point on the SFO VOR/DME 067° radial; to and clockwise along the 30-mile DME arc of the SFO VOR/DME; to and northeast along the SFO VOR/DME 227° radial; to and counterclockwise along the SFO VOR/DME 25-mile radius; to the point of the beginning.

* * * * *

Issued in Washington, DC, on February 23, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

Appendix—San Francisco Class B Airspace Area.

Note: This Appendix will not appear in the Code of Federal Regulations.

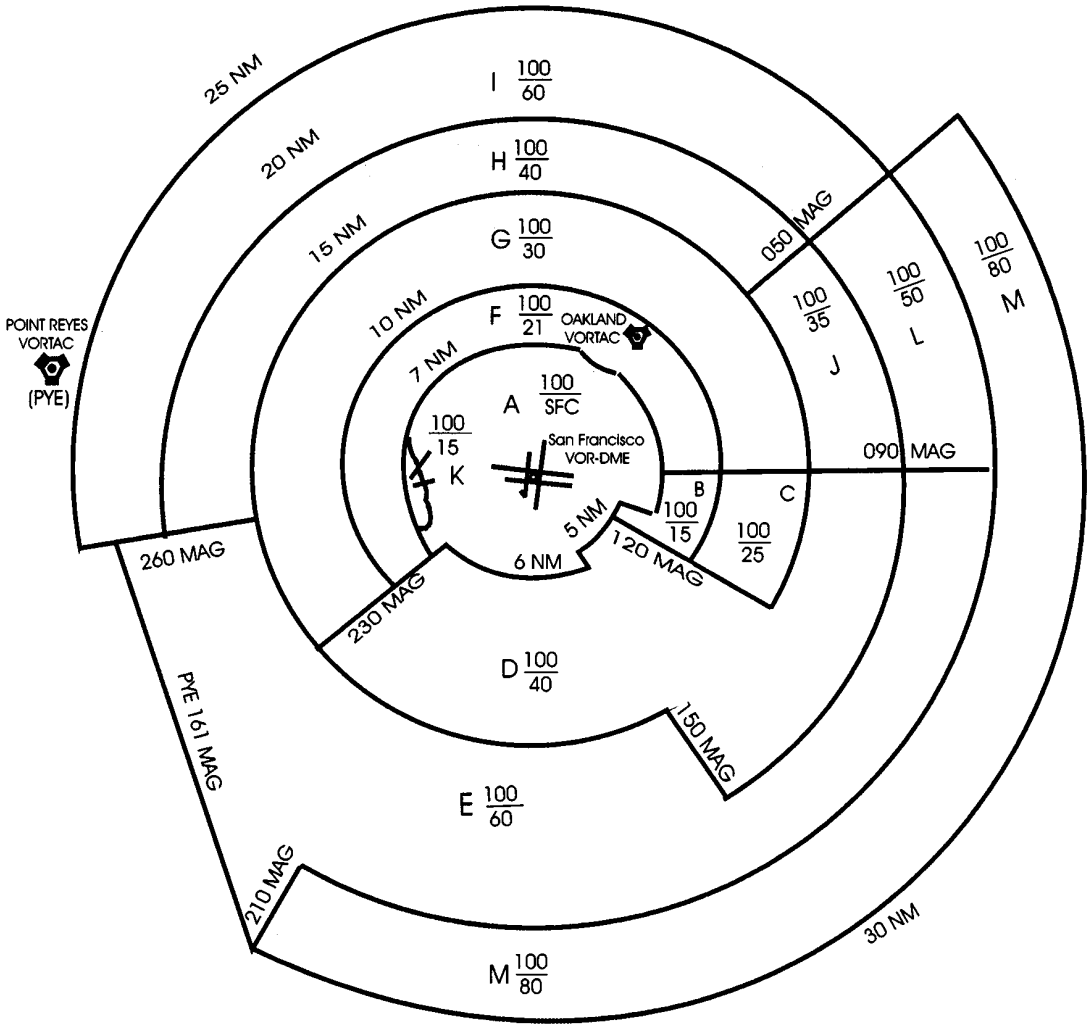
BILLING CODE 4910–13–P

PROPOSED

SAN FRANCISCO

CLASS B AIRSPACE AREA

(Not to be used for navigation)
(Not to scale)



Prepared by the

FEDERAL AVIATION ADMINISTRATION

Air Traffic Publications
ATA-10

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BILLING CODE 4910–13–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41090, International Series Release No. 1183, File No. S7–4–99]

RIN 3235–AH68

Exemption of the Securities of the Kingdom of Sweden under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 that would designate debt obligations issued by the Kingdom of Sweden as ''exempted securities'' for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of Sweden.

DATES: Comments should be submitted by March 31, 1999.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–4–99; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission (Mail Stop 10–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at 202/942–0079.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act''). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission (''SEC'' or ''Commission''), however, has adopted Rule 3a12–8 (17 CFR 240.3a12–8) (''Rule'') under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico and, most recently, Brazil, Argentina and Venezuela (the ''Designated Foreign Governments''). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 to add the debt obligations of the Kingdom of Sweden (''Sweden'') to the list of Designated Foreign Governments whose debt obligations are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on the debt obligations of Sweden would have to meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984 [1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.[4]

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico and, most recently, Brazil, Argentina and Venezuela.[5]

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[1] *See* Securities Exchange Act Release No. 20708 (''Original Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (''Original Porposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures on debt obligations of the United Kindgom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[4] The CFTC regulates the marketing and trading of foreign futures contracts. CFTC rules provide that any person who offers or sells a foreign futures contract to a U.S. customer must be registered under the CEA, unless otherwise specifically exempted.

[5] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Original Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987. In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1991 the Rule was again amended to (1) include debt securities offreed by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. See* Securities Exchange Act Release No.

III. Discussion

OM Stockholm AB of Sweden (''OM''), and its British affiliate OMLX, The London Securities and Derivatives Exchange Limited (''OMLX''), have proposed that the Commission amend 3a12–8 to include the sovereign debt of Sweden. OM and OMLX (which will be collectively referred to as ''OM'') have stated that they are listing standardized futures contracts on Swedish government securities for trading on their respective markets, beginning with a futures contract on the ten-year Swedish government bond. The applicants wish to make those futures contracts available to U.S. investors.[6]

The Swedish National Debt Office has submitted a letter supporting OM's application to amend the Rule.[7] The Commission in 1988 proposed adding Sweden to the list of countries designated under the Rule,[8] but rejected the proposal because of opposition from the Swedish government.[9]

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, the futures contracts require delivery outside the United States, and the contracts be traded on a board of trade) would continue to apply. OM has represented that the securities underlying the futures contracts it will be listing are not registered in the United States,[10] that delivery will occur through book entry registration in the Swedish Central Securities Depository, and that both OM and OMLX are ''boards of trade'' as defined by the CEA.[11]

In the most recent determinations to amend the Rule to include Mexico, Brazil, Argentina, and Venezuela, the Commission considered primarily whether market evidence indicated that an active and liquid secondary trading market exists for the sovereign debt of those countries.[12] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [13] by at least two nationally recognized statistical rating organizations (''NRSROs'').[14] The Commission continues to consider the existence of a high credit rating as indirect evidence of an active and liquid secondary trading market,[15] as well as considering trading data as evidence of an active and liquid secondary trading market for the security, when determining whether to include a sovereign issuer in the list of Designated Foreign Governments.

Sweden meets the credit rating standard. Moody's Investors Service (''Moody's'') has assigned Sweden a long-term local currency credit rating of Aa1 and a long-term foreign currency credit rating of Aa2. Standard & Poor's (''S&P'') has assigned Sweden a long-term local currency credit rating of AAA and a long-term foreign currency credit rating of AA+.

The Commission also observes that market data indicates that there exists an active and liquid trading market for Swedish issued debt instruments. As of September 30, 1998, the total Swedish public debt outstanding was equivalent to approximately US$179.4 billion (1409 billion Swedish kronor (''SEK'')).[16] The largest portion of this debt, Treasury bonds (Statsobligationslån) denominated in Swedish kronor, amounted to approximately US$95.7 billion (SEK 752 billion).[17] Treasury bills (Statsskuldväxlar) denominated in Swedish kronor amounted to approximately US$25.7 billion (SEK 202 billion).[18] Foreign currency-denominated debt amounted to approximately US$46.9 billion (SEK 368 billion).[19]

30166 (January 8, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995). In 1996, the Rule was amended to include debt securities issued by Brazil, Argentina, and Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996).

[6] *See* Letters from Philip McBride Johnson, counsel for OM and OMLX, to Jonathan Katz, Secretary, Commission, dated June 11, 1998; Memorandum provided by OM and OMLX to the Division of Market Regulation on July 6, 1998; Letter from Philip Johnson to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 24, 1998; Letters from Philip Johnson to Joshua Kans, Attorney, Division, Commission, dated August 20, September 11 and October 2, 1998; Letter from Philip Johnson to Michael Walinskas, dated December 7, 1998 (collectively ''OM petition'').

[7] *See* Letter from Tomas Magnusson, Director and General Counsel, Swedish National Debt Office, to Jonathan Katz, Secretary, Commission, dated June 29, 1998.

[8] *See* Securities Exchange Act Release No. 25998 (August 16, 1998), 53 FR 31709 (August 19, 1988).

[9] The Embassy of Sweden submitted two letters in response to the 1988 proposal, noting that currency controls prohibiting non-residents from holding Swedish kronor-denominated securities would preclude development of a market for physically settled futures on such securities, and stating that in any case it was not in the Swedish government's interest that such a market develop. As a matter of international comity, the Commission chose not to add Sweden to the Rule. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[10] A number of Swedish government debt securities denominated in U.S. dollars have been registered under the Securities Act. The Rule does not exempt futures contacts on those securities.

[11] *See* OM petition, *supra* note 6.

[12] *See, e.g.*, Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[13] The two highest categories used by Moody's Investor Services (''Moody's'') for long-term debt are ''Aaa'' and ''Aa.'' The two highest categories used by Standard & Poor's (''S&P'') for long-term debt are ''AAA'' and ''AA.''

[14] *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA – by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P).

[15] *See, e.g.*, Securities Exchange Act Release No. 36213 (September 11, 1995), 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by rule); Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[16] Data regarding the amount of outstanding debt was obtained from ''Den Svenska Statsskulden: The Swedish Central Government Debt,'' September 30, 1998, available from the website of the Swedish national Debt Office (http://www.sndo.se). All U.S. dollar equivalents set forth in this release are based on a conversion rate of SEK 7.8565 for US$1.00 in effect as of September 30, 1998.

The last four countries added to the list—Mexico, Brazil, Argentina and Venezuela—had lower amounts of public debt. *See* Securities Exchange Act Release No. 36530 (December 6, 1995), 60 FR 62323 (December 6, 1995) (outstanding Mexican government debt amounted to approximately US$87.5 billion face value as of March 31, 1995); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (public and publicly guaranteed debt of Brazil, Argentina and Venezuela amounted to approximately US$86 billion, US$55 billion and US$74 billion, respectively, as of December 31, 1993).

[17] The outstanding Treasury bonds include approximately US$78.2 billion (SEK 614 billion) worth of benchmark bonds, approximately US$5.5 billion (SEK 42.9 billion) worth of non-benchmark bonds, and approximately US$11.9 billion (SEK 93.7 billion) worth of inflation linked bonds.

[18] Other types of Swedish currency-denominated debt included approximately US$6.9 billion (SEK 54.8 billion) worth of lottery bonds. A total of US$132.5 billion (SEK 1041 billion) in Swedish government debt was denominated in Swedish kronor.

[19] Foreign-currency denominated debt includes approximately US$36.4 billion (SEK 285.7 billion) worth of public issues, US$7.9 billion (SEK 62.1 billion) worth of private placements, and US$3.8 billion (SEK 30.1 billion) worth of commercial paper.

OM has submitted data indicating that secondary market trading in Treasury bonds amounted to approximately US$1.156 trillion (SEK 9079 billion) in 1996, approximately US$1.343 trillion (SEK 10,550 billion) in 1997, and approximately US$593 billion (SEK 4662 billion) in the first six months of 1998.[20] The average daily trading volume during that period ranged from approximately US$2.72 billion (SEK 21.4 billion) for the month of July 1996 to approximately US$8.35 billion (SEK 65.6 billion) for the month of October 1997.[21] OM adds that in 1997, there were 109,128 transactions in benchmark Treasury bonds, 27,525 transactions in non-benchmark Treasury bonds, and 1999 transactions in inflation-linked Treasury bonds.[22]

OM has also submitted data stating that secondary market trading in Treasury bills amounted to approximately US$439.4 billion (SEK 3452 billion) in 1996, approximately US$487.6 billion (SEK 3831 billion) in 1997, and approximately US$209.3 billion (SEK 1645 billion) in the first six months of 1998. The average daily trading volume during that period ranged from approximately US$1.18 billion (SEK 9.3 billion) for the month of May 1996 to approximately US$2.64 billion (SEK 20.7 billion) for the month of March 1997. OM adds that in 1997, there were 38,634 transactions in Treasury bills.[23]

In light of the above data, the Commission preliminarily believes that the debt obligations of Sweden should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments.

IV. General Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of Sweden as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of Sweden's sovereign debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between Sweden and the Designated Foreign Governments for purposes of the Rule. The Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. The Commission also seeks comments on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

V. Costs and Benefits of the Proposed Amendments

The Commission has considered the costs and benefits of the proposed amendment to the Rule, and the Commission preliminarily believes that the proposed amendment offers potential benefits for U.S. investors, with no direct costs. If adopted, the proposed amendment would allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. Moreover, the trading of futures on the sovereign debt of Sweden should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Sweden. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others because the proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

The Commission requests comments on the costs and benefits of the proposed amendment to Rule 3a12–8. In particular, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others.

VI. Effect of the Proposed Amendment on Competition, Efficiency and Capital Formation

Section 23(a)(2) of the Exchange Act[24] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effect of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act. Moreover, Section 3 of the Exchange Act[25] as amended by the National Securities Markets Improvement Act of 1996[26] provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

In light of the standards cited in Sections 3 and 23(a)(2) of the Exchange Act, the Commission preliminarily believes that the proposed amendment to the Rule will promote efficiency, competition and capital formation. The proposal is intended to expand the range of financial products available in the United States, and will make available to U.S. investors an additional product to use to hedge the risks associated with the trading of the underlying sovereign debt of Sweden. Insofar as the proposed amendment contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of Sweden is consistent with the goals and purposes of the federal securities laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

The Commission requests comments as to whether the amendment to the Rule will have any anti-competitive effects.

VII. Administrative Requirements

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted,

[20] OM petition, *supra* note 6. OM states that the statistics about secondary market trading in Swedish debt were derived from data specially prepared by the Swedish Central Securities Depository. *Id.*

[21] OM has submitted data stating that the average daily trading volume for Treasury bonds decreased to approximately US$2.11 billion (SEK 16.6 billion) for the month of July 1998.

[22] OM states that secondary market trading for Swedish government debt is primarily conducted on a phone-based and screen-based over-the-counter market conducted by a number of dealers, with transactions in Treasury bonds and Treasury bills registered at the PMX Exchange at the end of the trading day. OM petition, *supra* note 6.

[23] OM states that secondary market trading in lottery bonds was equivalent to approximately US$512 million (SEK 4.03 billion) in 1996, US$449 million (SEK 3.53 billion) in 1997, and US$213 million (SEK 1.67 billion) in the first half of 1998. OM has not provided secondary market trading data for other Swedish debt securities. According to OM, transaction data for Swedish government debt denominated in foreign currencies is extremely difficult to obtain. OM further contends that because a number of Swedish government debt securities denominated in U.S. dollars have been registered under the Securities Act of 1933, and therefore are not eligible for exemption under the Rule, secondary market data for securities denominated in non-kronor currencies is less significant. *See id.*

OM states that it presently does not intend to list any futures on inflation-linked bonds, treasury bonds with repurchase agreements, lottery bonds or commercial papers. *Id.*

[24] 15 U.S.C. 78w(a)(2).

[25] 15 U.S.C. 78c.

[26] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

VIII. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the *Code of Federal Regulations* as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xviii), removing the ''period'' at the end of paragraph (a)(1)(xix) and adding ''; or'' in its place, and adding paragraph (a)(1)(xx), to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xx) The Kingdom of Sweden.

* * * * *

By the Commission.

Dated: February 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendment to Rule 3a12–8 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act''), which would define the government debt securities of the Kingdom of Sweden (''Sweden'') as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of Sweden. Second, because futures contracts on the nineteen countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because those primarily interested in trading such futures contracts are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10.

Arthur Levitt, Jr.

Chairman.

Dated: February 23, 1999.

[FR Doc. 99–4953 Filed 2–26–99; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–049–1–9907b; FRL–6235–9]

Approval and Promulgation of Implementation Plans Alabama: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Aslabama through the Department of Environmental Management. On October 23, 1998, the State of Alabama through the Department of Environmental Management (ADEM) submitted a SIP submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. Revisions were made to Chapter 335–3–1—General Provisions. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by March 31, 1999.

ADDRESSES: Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562–9038 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 28, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–4689 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ33–1–190 FRL–6237–1]

Approval and Promulgation of Implementation Plans; New Jersey 15 Percent Rate of Progress Plans, Recalculation of 9 Percent Rate of Progress Plans and 1999 Transportation Conformity Budget Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a New Jersey State Implementation Plan (SIP) revision involving the State's Ozone plan. Specifically, EPA's proposed approval includes the 15 Percent Rate of Progress (ROP) Plans, recalculation of the 9 Percent ROP Plans, updates to the 1990 base year emission inventories, 1996 and 1999 projection year emission inventories, and the 1999 transportation conformity budgets. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone. In addition, a final approval of this SIP revision would correct the deficiency which led EPA to disapprove on December 12, 1997 New Jersey's 15 Percent ROP Plans. Consequently, the sanction and Federal Implementation Plan (FIP) process that was started by EPA's disapproval would terminate when EPA takes action to approve in final form, today's proposed approval. The clocks associated with the State's failure to implement the enhanced inspection and maintenance program continue to run.

DATES: Comments must be received on or before March 31, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Introduction/Background

Section 182 of the Clean Air Act (Act) specifies what states are required to submit to EPA for areas classified as nonattainment for ozone. On April 30, 1997 (62 FR 23410), EPA proposed approval of New Jersey's plan designed to meet several of these Act requirements, including all of those which were subsequently revised by New Jersey and are being proposed for action today. On June 30, 1997 (62 FR 35100), EPA either approved or gave conditional interim approval to these requirements. The reader is referred to these actions for further details.

On December 12, 1997, EPA announced by letter that the conditional approval of New Jersey's 15 Percent ROP Plans had converted to a disapproval because the enhanced inspection and maintenance program, which was part of the State's plans, did not start as scheduled and resulted in an emission reduction shortfall. This disapproval applied to the New Jersey portions of the two severe ozone nonattainment areas: the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area (NAA) and the Trenton NAA.

II. State Submittal

On February 10, 1999, Commissioner Shinn of the New Jersey Department of Environmental Protection (NJDEP) submitted a request to EPA to process its revision of the 15 Percent ROP portion of its ozone SIP. This SIP revision includes: updates to the 1990 base year emission inventories, 1996 and 1999 projection year emission inventories, 15 Percent ROP Plans and the 1999 transportation conformity budgets. The intended effect is to provide sufficient emission reductions to address the shortfall.

A. Revisions to the 1990 Base Year and 1996 and 1999 Projection Year Emission Inventories

As part of New Jersey's efforts to continually improve the accuracy of its emission estimates, the NJDEP identified an update/correction to the estimate of emissions from landfills which affects the 1990 base year and 1996 and 1999 projection year emission inventories. This update/correction is the result of three changes: (1) revised modeling guidance from the USEPA for estimating landfill emissions; (2) correction of errors identified in the NJDEP's landfill emissions data base; and (3) updated landfill emissions data. The changes to these inventories are summarized in Table 1.

TABLE 1.—1990 VOC EMISSION INVENTORIES, AND 1996 AND 1999 VOC PROJECTION EMISSION INVENTORIES

	Northern New Jersey NAA (VOC tons/day)			Trenton NAA (VOC tons/day)		
	1990	1996	1999	1990	1996	1999
Major Point Sources	238.02	211.93	216.28	111.68	85.87	87.93
Minor Point Sources	170.24	162.81	166.82	63.49	61.41	62.61
Area Sources	115.52	117.29	118.01	33.78	35.53	36.36
Highway Mobile Sources	296.66	246.71	242.41	103.45	89.22	88.17
Off-Highway Mobile Sources	136.58	139.82	141.44	45.76	48.13	49.34
Biogenic Sources [1]	209.66	.....	.....	203.20	.....	.....
Use of Pre-1990 Banked ERC	.....	5.00	5.00	.....	3.00	3.00

TABLE 1.—1990 VOC EMISSION INVENTORIES, AND 1996 AND 1999 VOC PROJECTION EMISSION INVENTORIES—Continued

	Northern New Jersey NAA (VOC tons/day)			Trenton NAA (VOC tons/day)		
	1990	1996	1999	1990	1996	1999
Total	1166.69	883.56	889.96	561.35	323.16	327.42

[1] The State did not account for biogenic sources in its 1996 and 1999 Projections.

Using the revised emission inventories, New Jersey recalculated target emission reductions. They used the same procedure used in its earlier 15 Percent ROP Plans. A detailed discussion of this procedure is contained in the April 30, 1997 **Federal Register** (62 FR 23413). Table 2 summarizes the original and revised 15 Percent ROP calculations.

TABLE 2.—ORIGINAL AND REVISED 15 PERCENT ROP PLAN CALCULATIONS

Component of the plan	Original 15% plan		Revised 15% plan	
	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)	Northern New Jersey NAA VOC (tons/Day)	Trenton NAA VOC (tons/day)
1990 Base Year Emission Inventory	1173.96	564.67	1166.69	561.35
1990 Baseline Emission Inventory	958.19	359.90	950.91	356.59
Non-Creditable Emission Reductions	69.18	21.17	69.18	21.17
1990 Adjusted Baseline Emission Inventory	889.01	338.74	881.73	335.42
15% Reduction Target	133.35	50.81	132.26	50.31
1996 Target Emission Inventory	755.66	287.93	749.47	285.11
1996 Projected Emission Inventory	885.48	325.11	883.56	323.16
Required 15 Percent Reductions	129.82	37.18	134.10	38.05

Based on EPA's review of the methodology New Jersey used to make these calculations, EPA proposes to approve the revisions to the 1990 base year VOC emission inventories, and 1996 and 1999 projection year VOC emission inventories. In addition, EPA proposes to approve the 15 Percent ROP calculations.

B. New 15 Percent ROP Plans

New Jersey has provided a plan to achieve the reductions required for the two nonattainment areas. The following is a concise description of each control measure New Jersey plans on using to achieve the emission reductions in its 15 Percent ROP Plans. All the State measures have been adopted and submitted as SIP revisions except for administrative changes to New Jersey's Low Emission Vehicle Program. The revisions to New Jersey's Low Emission Vehicle Program are in the proposal stage and are needed to formalize New Jersey's opt-in to the National Low Emission Vehicle Program which is included in the 15 Percent ROP Plans. EPA anticipates that New Jersey will submit these administrative changes by March 1, 1999. EPA will not include these emission reductions in the final action unless New Jersey has submitted them in final form.

TABLE 3.—SUMMARY OF REVISED 15 PERCENT ROP PLANS

	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)
Required VOC reductions to meet 15 Percent Plan	134.10	38.05
Previous 15 Percent ROP Plan measures:		
Mobile Source control measures:		
Tier 1 vehicles	14.85	5.53
Reformulated gasoline—on highway	45.98	16.77
Reformulated gasoline—off highway	4.37	1.36
Enhanced Inspection and Maintenance	0.00	0.00
Stationary source control measures:		
Barge loading	22.75	1.23
Subchapter 16	16.74	3.79
NJ consumer products rule	5.98	1.84
Federal HON rule	0.12	0.06
Total VOC reductions	110.79	30.58
Shortfall	23.31	7.47
New Control Measures:		

TABLE 3.—SUMMARY OF REVISED 15 PERCENT ROP PLANS—Continued

	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)
Mobile Source control measures:		
National Low Emission Vehicle program	0.48	0.18
Federal Off highway small engines	16.16	5.70
Revisions to Basic I/M program	2.47	1.10
Stationary Source control measures:		
NJ Landfill controls	0.37	0.12
NJ Architectural Coatings rule	4.91	1.51
Federal Architectural Coatings rule	3.22	1.15
Federal Autobody Refinishing rule	13.23	3.44
VOC reductions from new control measures	40.84	13.20
Total VOC reductions from all measures	151.63	43.78
Surplus	17.53	5.73

C. Measures Achieving the Projected Reductions

(1) Previous 15 Percent ROP Plan Measures

New Jersey included all of the control measures previously contained in its 15 Percent ROP Plan in the new 15 Percent ROP Plans except enhanced inspection and maintenance (I/M). New Jersey assumed that no emission reductions from enhanced I/M would occur by November 15, 1999 and so no credit is being taken for these initially anticipated reductions. These measures are summarized in Table 3. New Jersey is moving forward with implementing the Enhanced I/M program which should start inspecting vehicles in late 1999, thus providing reductions for years beyond 1999. The reader is referred to the original **Federal Register** documents for details on these non-I/M control measures.

(2) New Control Measures

National Low Emission Vehicle Program

EPA proposed the National Low Emission Vehicle (NLEV) Program in September 1995 and promulgated a supplemental final rule for the NLEV Program on January 7, 1998 (63 FR 925). The program consists of the sale of low emission vehicles (LEVs) beginning with model year 1999 in the Ozone Transport Region (OTR), which includes New Jersey, and model year 2001 for the rest of the country (except California and other states implementing the California LEV program). Under the NLEV program, the emissions from all cars manufactured by an auto maker are averaged together and must meet an average emission standard. This average emission standard gets progressively more stringent, until in 2001 that average would correspond to the emissions that would result if 100 percent of the vehicles met low emission vehicle standards. While the enforceability of the NLEV Program is the responsibility of EPA, New Jersey must make some administrative changes to its SIP. These were proposed in November 1998 and the changes need to be adopted and submitted to EPA by March 1, 1999. The 15 Percent ROP Plans take credit for only one year of the NLEV program, that is, through 1999. EPA agrees with the calculated emission reductions associated with this program. EPA proposes to approve reliance on these reductions, but EPA will not include them in the final action unless New Jersey has submitted them in final form.

Federal Nonroad Spark Ignition Engines

On May 16, 1994, EPA published a notice of proposed rulemaking for small nonroad engines (59 FR 25399). The **Federal Register** notice, ''Control of Air Pollution; Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts.'' EPA estimates the proposed emission standards will result in a 32 percent reduction in VOC emissions and a 14 percent reduction in carbon monoxide emissions nationally, by the year 2020 when complete engine turnover is projected. In the July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated the first phase of the regulations to control emissions from new nonroad spark-ignition engines. This regulation is contained in the Code of Federal Regulations (CFR), Title 40, ''Part 90—Control of Emissions From Nonroad Spark-Ignition Engines.'' The second phase will be adopted in the future.

EPA has determined that the first phase of the new nonroad standards will cause a reduction of VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998 and 23.9 percent in 1999 nationally. New Jersey applied these percentages to New Jersey's specific engine population, and calculated that the resulting VOC emission reductions in 1999 will be 16.16 tons per day in the Northern New Jersey Nonattainment area and 5.70 tons per day in the Trenton Nonattainment area. EPA agrees with the calculated emission reductions associated with this program.

Revisions to Basic Inspection and Maintenance Program

Since 1990, New Jersey has made several changes to its basic (I/M) program. These included increased penalties and enforcement for failing to have valid inspection sticker, adding a test for the integrity of a vehicle's gas cap at centralized inspection stations, and adding a visual inspection of the gas cap and evaporative emission control system at decentralized inspection stations. New Jersey also changed the inspection frequency from annual to biennial in order to facilitate installation of test equipment needed for the enhanced I/M program. EPA final approval of this SIP revision is described in 63 FR 45402, August 26, 1998. The changes in the inspection frequency reduces the emission benefits from the original program, but the additional test features, which were added, resulted in a net increase in emission reductions. EPA agrees with the emission reductions calculated by New Jersey. The emission reductions from this control measure have already been achieved.

New Jersey Architectural Coatings Rule

New Jersey developed an architectural coatings regulation, Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products'' which was originally adopted in 1989 and subsequently revised. EPA

approved Subchapter 23 as part of the SIP on May 23, 1993 (58 FR 29975). The regulation took effect in January 1990 for Group 1 products and March 1990 for Group 2 products. The regulation allowed coatings manufactured before 1990 to be sold until 1993. Because of the uncertainty in determining when the emission reductions occurred, New Jersey treated this source category as uncontrolled in the 1990 base year emission inventory and did not take credit in the original 15 Percent ROP Plans. As part of this SIP revision, New Jersey reassessed the emission reductions which would be achieved from this regulation. For traffic paints and high performance maintenance coatings, New Jersey took no emission reduction credit because they were already included in the 1990 base year. For the remaining categories subject to Subchapter 23 limits, New Jersey calculated the emission reductions since all coatings sold after 1993 were required to comply.

EPA agrees with the calculated emission reductions. The emission reductions from this control measure have already been achieved.

New Jersey Landfill Controls

New Jersey has implemented a landfill closure program which requires the installation of a gas collection system and control system. EPA approved this as part of the SIP on June 29, 1990 (55 FR 26687). The requirements only become applicable upon closure of the landfill and, therefore, the emission reductions from landfills closed after 1990 are creditable for 15 Percent ROP Plan purposes. EPA agrees with the calculated emission reductions. The emission reductions from this control measure have already been achieved.

Federal Architectural Coatings Rule

EPA developed national regulations for architectural coatings as part of the larger requirement to control VOC emissions from certain categories of consumer and commercial products. EPA proposed the ''National Volatile Organic Compound Emission Standards for Architectural Coatings'' (Architectural rule) on June 25, 1996 (61 FR 32729), and September 3, 1996 (61 FR 46410). On September 11, 1998 (63 FR 48848), EPA promulgated 40 CFR part 59, subpart D—''National Volatile Organic Compound Emission Standards For Architectural Coatings.'' The reader is referred to these **Federal Register**s for greater detail.

New Jersey is taking credit only for the emission reductions associated with those categories of coatings where EPA's national rule goes beyond New Jersey's rule. EPA agrees with the calculated emission reductions and EPA guidance permits these emission reductions to be used in 15 and 9 Percent ROP Plans.

Federal Autobody Refinishing Rule

EPA developed national regulations for Automobile refinish coatings and coating components. These were proposed on April 30, 1996 (61 FR 19005) and on September 11, 1998 (63 FR 48806), EPA promulgated 40 CFR part 59, subpart B—''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings'' (subpart B). The reader is referred to these **Federal Register**s for greater detail. EPA agrees with the calculated emission reductions. The emission reductions from this control measure will be achieved by November 15, 1999.

15 Percent ROP Plan Evaluation

New Jersey has identified control measures necessary for achieving the required emission reductions and in addition, they provided surplus reductions. All the measures have been adopted and are either implemented or will be shortly. EPA is proposing to find that the 15 Percent ROP Plans contain the necessary measures as identified in Table 3 to achieve the required emission reductions. The original 15 Percent ROP Plans demonstrated that the emission reductions would be achieved by November 15, 1999. The new 15 Percent ROP Plans will also achieve these reductions by November 15, 1999. Therefore, EPA is proposing approval of the 15 Percent ROP Plans.

D. The 9 Percent ROP Plans and Transportation Conformity Budgets

EPA's June 30, 1997 (62 FR 35100) approval of New Jersey's 9 Percent ROP Plans was conditioned on the State submitting revised emission reduction calculations. The purpose of these calculations was to ensure that New Jersey correctly accounted for the amount of emission reductions attributable to its enhanced I/M program and appropriately adjusted the ROP plans to make use of the surplus emission reductions that these plans identified in the event that the enhanced I/M program provided less emission reductions than anticipated. Since the enhanced I/M program will not begin operation until late 1999 at the earliest, it was necessary for New Jersey to submit revised emission reduction calculations that removed and replaced all of the emission reductions that had been attributed to the enhanced I/M program for years prior to 2000. New Jersey fulfilled this condition in a July 30, 1998 letter from Commissioner Robert C. Shinn, Jr. to EPA Region 2 Deputy Regional Administrator William J. Muszynski. Table 4, which appears below, summarizes the State's recalculated 9 Percent ROP Plans. As indicated in the table, these recalculations show that New Jersey will still show 9 percent reductions by November 15, 1999, without relying on any credit from enhanced I/M.

TABLE 4.—SUMMARY OF NEW JERSEY'S 9 PERCENT ROP PLANS

	Northern New Jersey NAA (tons/day)		Trenton NAA (tons/day)	
	VOC	NO_X	VOC	NO_X
Required VOC reductions to meet 9 Percent Plan	95.91		41.98	
Creditable Reductions				
Surplus reductions from 15 Percent ROP Plans	17.53		5.73	
Mobile Source control measures:				
Tier I Vehicles		29.53		10.14
National Low Emission Vehicle Program		0.44		0.17
Reformulated Gasoline-On highway		0.74		0.22
Reformulated Gasoline-Off highway				
Enhanced Inspection & Maintenance				
Stationary source control measures:				
Barge and Tanker loading				
Subchapter 16 & 19—RACT		70.92		58.21

TABLE 4.—SUMMARY OF NEW JERSEY'S 9 PERCENT ROP PLANS—Continued

	Northern New Jersey NAA (tons/day)		Trenton NAA (tons/day)	
	VOC	NO_X	VOC	NO_X
Federal CTG—RACT Consumer Products rule—Subchapter 24				
Total Reductions	17.53	[1] 101.63	5.73	[1] 68.74
Shortfall	78.38	.....	36.25	.....
VOC equivalents from NO_X Substitution	93.48	.....	54.12	.....
Surplus reductions from 15 Percent ROP Plans	15.1	.....	17.87	.....
Reductions not credited in today's action Ozone Transport Commission NO_X MOU2	.....	23.22	.....	0.00

[1] 101.63 tons/day of NO_X converts to 93.48 tons/day of VOC equivalent in the Northern New Jersey NAA. 68.74 tons/day of NO_X converts to 54.12 tons/day of VOC equivalent in the Trenton NAA.

[2] New Jersey has fulfilled the Ozone Transport Commission NO_X Memorandum of Understanding by adopting Subchapter 31 ''Ozone Transport Commission NO_X Budget Program.'' New Jersey is in the process of submitting Subchapter 31 as a SIP revision.

In its December 14, 1998 addendum to its proposed 15 Percent ROP plans and proposed 1999 Transportation Conformity Budgets, New Jersey clarified its intention that the revised emission reduction calculations contained in the July 30, 1998 letter from Commissioner Shinn to Deputy Regional Administrator Muszynski be considered as part of this SIP revision. Therefore, EPA is proposing to approve these revisions to New Jersey's 9 Percent ROP plans.

The submittal also included proposed revised 1999 transportation conformity budgets based on the revised control strategies included in the 15 Percent ROP plans and in the July 30, 1998 version of the 9 Percent ROP plans. Table 5 contains the 1999 conformity budgets in tons/day of VOC and nitrogen oxides (NO_X) emissions. EPA is proposing to approve these conformity budgets for both the 15 Percent and 9 Percent ROP Plans as replacements for the budgets contained in the previously approved 9 Percent ROP plans for 1999.

TABLE 5.—1999 MOBILE SOURCE ON-ROAD EMISSION BUDGETS FOR CONFORMITY

	VOC (tons/day)	NO_X (tons/day)
North Jersey Transportation Planning Authority	182.23	279.14
Delaware Valley Regional Planning Commission (New Jersey Portion)	57.97	81.57
South Jersey Transportation Planning Organization	21.45	33.86

EPA's December 12, 1997 disapproval of New Jersey's 15 Percent ROP Plans resulted in New Jersey not being able to make conformity determinations or changes to their transportation plans and programs involving non-exempt projects funded by federal transportation funds. This is known as a conformity freeze. On February 10, 1999, EPA informed New Jersey that it had found the conformity budgets adequate and that the conformity freeze was being lifted.

III. Conclusion

EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations and EPA policy. EPA is proposing approval of the following: (1) Revisions to the New Jersey 1990 base year emission inventories, (2) revisions to the New Jersey 1996 and 1999 projection year emission inventories, (3) the New Jersey 15 Percent ROP Plans, (4) recalculation of the 9 Percent ROP Plans, and (5) the transportation conformity budgets as revised by the 15 Percent ROP Plans and recalculated 9 Percent ROP Plans.

In addition, final approval of this SIP revision would eliminate the shortfall identified in EPA's December 12, 1997 disapproval of New Jersey's 15 Percent ROP Plans and, thereby, terminate the sanction process associated with this deficiency and the requirement for EPA to promulgate a Federal Implementation Plan (FIP). EPA must evaluate any public comments received on this proposal before it can take final approval action.

EPA's proposed FIP was published on January 22, 1999 (64 FR 3465). Should EPA take final action on today's proposed approval of New Jersey's 15 Percent ROP Plans, it would eliminate the need for the January 22, 1999 proposed FIP and the proposed FIP will therefore be withdrawn.

If and when EPA promulgates this proposed action, EPA will make its approval effective upon the date of publication in the **Federal Register**, based upon a finding of good cause. Approval of this action would relieve restrictions that have been placed on the State when EPA disapproved its SIP on December 12, 1997 and will not adversely affect other parties.

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 Executive Order 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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. EPA is proposing approval of New Jersey's 15 Percent Plan which only allocates emission reductions, it does not create any new requirements. Accordingly, the requirements of section 1(a) of Executive Order 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed SIP approval is not subject to E.O. 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials and 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. Accordingly, the requirements of section 3(b) of Executive Order 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 proposed 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 proposed approval action 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–4966 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400132B; FRL–6066–1]

RIN 2070–AD09

Persistent Bioaccumulative Toxic (PBT) Chemicals; Amendments to Proposed Addition of a Dioxin and Dioxin-Like Compounds Category; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On January 5, 1999, EPA issued a proposed rule to lower the reporting thresholds for certain

persistent bioaccumulative toxic (PBT) chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The proposed rule also included the addition of certain PBT chemicals, amendments to the proposed rule to add a dioxin and dioxin-like compounds category, as well as other related reporting changes. The purpose of this action is to inform interested parties that, in response to several requests, EPA is extending the comment period by 30 days until April 7, 1999. The comment period for the proposed rule was scheduled to close on March 8, 1999.

DATES: Written comments, identified by the docket control number OPPTS–400132, must be received by EPA on or before April 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION'' section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, 202–260–3882, e-mail: bushman.daniel@epamail.epa.gov, for specific information on the proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the chemicals listed under Table 1 in Unit V.C.1. of the January 5, 1999 proposed rule (64 FR 688) (FRL–6032–3). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Facilities that: incinerate or otherwise treat, store or dispose of hazardous waste or sewage sludge; operate chlor-alkali processes; manufacture chlorinated organic compounds, pesticides, other organic or inorganic chemicals, tires, inner tubes, other rubber products, plastics and material resins, paints, Portland cement, pulp and paper, asphalt coatings, or electrical components; operate cement kilns; operate metallurgical processes such as steel production, smelting, metal recovery furnaces, blast furnaces, coke ovens, metal casting and stamping; operate petroleum bulk terminals; operate petroleum refineries; operate industrial boilers that burn coal, wood, petroleum products; and electric utilities that combust coal and/or oil for distribution of electricity in commerce.
Federal Government	Federal facilities that: burn coal, wood, petroleum products; burn wastes; incinerate or otherwise treat, store, or dispose of hazardous waste or sewage sludge.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and the January 5, 1999 proposed rule from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register - Environmental Documents.'' You can also go directly to the ''Federal Register'' listings at http://www.epa.gov/fedrgstr/.

2. *In person or by phone.* If you have any questions or need additional information about this action, please contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this document, including the public version, has been established under docket control number OPPTS–400132, (including comments and data submitted electronically as described below). This record includes not only the documents physically contained in the docket, but all of the documents included as references in those documents. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. The TSCA Nonconfidential Information Center telephone number is 202–260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., ''OPPTS-400132'') in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC, telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: ''oppt.ncic@epa.gov.'' Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–400132. Electronic comments on this notice may also be

filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. Background Information

A. What Does this Notice Do and What Action Does this Notice Affect?

This notice extends the comment period for EPA's January 5, 1999 proposed rule (64 FR 688) to lower the reporting thresholds for certain PBT chemicals that are subject to reporting under EPCRA section 313 and PPA section 6607. The January 5, 1999 proposed rule also proposed to lower reporting thresholds for dioxin and dioxin-like compounds, which were previously proposed for addition to the EPCRA section 313 list of toxic chemicals. EPA proposed these actions pursuant to its authority under EPCRA section 313(f)(2) to revise reporting thresholds. In addition, EPA proposed to add certain PBT chemicals to the list of chemicals subject to the reporting under EPCRA section 313 and PPA section 6607 and to establish lower reporting thresholds for these chemicals. EPA proposed to add these chemicals to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories that meet the EPCRA section 313(d)(2) toxicity criteria. The proposed additions of these chemicals are based on their carcinogenicity or other chronic human health effects and/or their adverse effects on the environment. As part of the proposed rule, EPA amended its proposal published in the **Federal Register** of May 7, 1997 (62 FR 24887) (FRL–5590–1), to add a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals by proposing to exclude the co-planar polychlorinated biphenyls (PCBs) from the category and by proposing to add an activity qualifier to the category. EPA also proposed to require that separate reports be filed for tetraethyl lead and tetramethyl lead which are listed under the lead compounds category. EPA's proposed actions also included modifications to certain reporting exemptions and requirements for those toxic chemicals that would be subject to the lower reporting thresholds.

In addition, today's action also extends the comment period for the Notice of Availability and Clarification that was published on February 23, 1999 (64 FR 8766) (FRL–6061–7). The February 23, 1999 action made available an additional document concerning the economics analysis for one of the reporting threshold options discussed in the January 5, 1999 proposed rule. The action also made clarifications to the discussion in the proposed rule concerning the reporting limitation for certain metals when contained in alloys.

B. Why and for How Long is EPA Extending the Comment Period?

EPA has received requests from a number of groups to extend the comment period for the January 5, 1999 proposed rule. These groups include the American Cyanamid Company, American Forest & Paper Association, American Portland Cement Alliance, Chemical Manufacturers Association, Chlorine Chemistry Council, Eastman Chemical Company, National Mining Association, and the Pentachlorophenol Task Force. These groups have requested additional time to review relevant information and prepare comments on the proposed rule. EPA has considered these comments and has determined that extending the comment period is an appropriate action that will not cause a significant delay in the evaluation of the proposed rule. Therefore, EPA is extending the comment period on the January 5, 1999 proposed rule and the February 23, 1999 action by 30 days until April 7, 1999. All comments should be submitted following the detailed instructions as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION'' section of this document. All comments must be received by April 7, 1999.

III. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. As indicated previously, this action merely announces the extension of the comment period for the proposed rule. This action does not impose any new requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Nor does it require prior consultation with State, local, and Tribal government officials as specified by Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (see 64 FR 688, January 5, 1999).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 23, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–4971 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3800

[WO–300–1990–00]

RIN 1004–AD22

Mining Claims Under the General Mining Laws; Surface Management; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The Bureau of Land Management (BLM) is correcting the address for hand delivery of comments and information related to public hearings to be held on its recently published proposed rule to revise regulations governing mining operations involving metallic minerals on public lands. This action will ensure that the public has the correct location for hand delivery of comments and the correct dates and times for the public hearings.

ADDRESSES: The correct address for hand delivery of comments on the proposed rule is: Bureau of Land Management Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Michael Schwartz, Regulatory Affairs Group, Bureau of Land Management, (202) 452–5198.

SUPPLEMENTARY INFORMATION: On February 9, 1999, the Bureau of Land Management (BLM) published a proposed rule to revise its regulations governing mining operations involving metallic and some other minerals on public lands administered by BLM. See 64 FR 6422. The proposed rule announced the addresses for submitting comments and the dates and times of the public hearings. In the first column on page 6422, the address for hand delivery of comments was incorrect. The correct address appears in the **ADDRESSES** section above.

In the third column on page 6422 and the first column on page 6423, we gave the dates and times of the public hearings. The date of the Elko, Nevada public hearing was incorrect. The hearing will be held on Thursday, March 25, 1999.

We did not give the times of the Ontario, California; Eugene, Oregon; and Spokane, Washington public hearings because the information was not available at the time of publication of the proposed rule. The times of the hearings are as follows:

Ontario, California—1 p.m. and 6 p.m.
Eugene, Oregon—1 p.m. and 7 p.m.
Spokane, Washington—1 p.m. and 7 p.m.

Dated: February 24, 1999.

Michael Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 99–4994 Filed 2–26–99; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 96–86; DA 99–331]

The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension for filing comments.

SUMMARY: This document extends the time to file replies to oppositions to petitions for reconsideration and replies to comments concerning the Commission's combined *First Report and Order and Third Notice of Proposed Rule Making (''First Report* or *''Third Notice''* as applicable) adopted on August 6, 1998.

DATES: Replies to oppositions to petitions for reconsideration of the *First Report* are due on or before February 23, 1999, and reply comments regarding the *Third Notice* are due on or before February 25, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Publications Branch, Room TW–A325, The Portals II, 445 12th ST., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter Daronco or Michael Pollak, at the Public Safety & Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The full text of the *Order* is as follows:

1. On August 6, 1998, the Commission adopted a combined *First Report and Order (First Report) and Third Notice of Proposed Rulemaking (Third Notice)* in this proceeding. *See* 63 FR 58685 (Nov. 2, 1998). Petitions for reconsideration of the *First Report* were filed and oppositions to these petitions were filed on February 5, 1999. The current deadline for filing replies to these oppositions is February 16, 1999. *See* 64 FR 3298 (Jan. 21, 1999). Comments were also filed regarding the *Third Notice* and the current deadline for filing reply comments is February 18, 1999. *See* 64 FR 1003 (Jan. 7, 1999).

2. On February 8, 1999, the Commission received a *Motion for Extension of Time* filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO). APCO requests seven (7) day extensions of time both for filing replies to oppositions to petitions for reconsideration of the *First Report*, and for filing reply comments regarding the *Third Notice*. APCO states these short extensions would afford interested parties adequate time to prepare full and complete comments because most parties are simultaneously participating in both the ''reconsideration'' and ''Third NPRM'' elements of this proceeding. Specifically, APCO contends that the proximity of the two related deadlines, combined with the upcoming Federal holiday on February 15, 1999, will limit the ability of public safety agencies and organizations to provide adequate and timely submissions in both aspects of this critical proceeding. APCO adds while a 30-day period was allotted for reply comments regarding the *Third Notice*, many parties have been occupied during that period with preparing oppositions to the petitions for reconsideration.

3. It is the policy of the Commission that extensions of time are not routinely granted. Upon review, however, we agree that an extension will afford parties the necessary time to coordinate and file comments that will facilitate the compilation of a more complete record in this proceeding. We believe that seven-day extensions of time, both for filing replies to oppositions to petitions for reconsideration of the *First Report* and reply comments regarding the *Third Notice*, should provide an adequate opportunity for all parties to prepare and file responsive and complete pleadings in this proceeding without causing undue delay to the Commission's consideration of this proceeding.

4. Accordingly, it is ordered that the *Motion for Extension of Time* filed by the Association of Public-Safety Communications Officials-International, Inc., on February 8, 1999, *is granted*. Parties shall file replies to oppositions to petitions for reconsideration of the *First Report* no later than February 23, 1999, and reply comments regarding the *Third Notice* no later than February 25, 1999.

5. This action is taken pursuant to the authority provided in Section 1.46 of the Commission's Rules, 47 CFR 1.46 and under delegated authority pursuant to Sections 0.131 and 0.331 of the

Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Herbert W. Zeiler,

Deputy Chief, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–4687 Filed 2–26–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5119; Notice 01]

RIN No. 2127–AH57

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: NHTSA is considering whether to grant a petition to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 105, Hydraulic and Electric Brake Systems, and FMVSS No. 121, Air Brake Systems, to require that school buses be equipped with a parking brake warning system that activates when the school bus engine is turned off, the transmission is in neutral, and the parking brake has not been applied. The petition was submitted by Schmitty and Sons School Buses, a school bus operator that is concerned about the possibility of school bus roll away crashes due to the driver not applying the parking brake. The petitioner cited several instances in which this has occurred. This request for comments notice seeks to obtain information to help the agency determine the magnitude of the problem and the potential effectiveness of the proposed warning system.

DATES: Comments must be received on or before April 30, 1999.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW, Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Jeff Woods, Office of Safety Performance Standards (NPS–22), NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Mr. Woods' telephone number is (202) 366–6206; facsimile (202) 366–4329.

For legal issues: Ms. Dorothy Nakama, Rulemaking Division, Office of Chief Counsel, NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Ms. Nakama's telephone number is (202) 366–2992 and her facsimile number is (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

A petition was submitted to NHTSA on June 23, 1998, by Schmitty and Sons School Buses, a school bus operator. The petition cited several crashes in Minnesota involving school buses in which the parking brake was not set and the bus rolled into another vehicle. In one instance, it was reported that an empty school bus rolled into another school bus that was unloading students during a practice emergency exit drill, and as a result, several students were injured.

The petitioner believes that a warning system should be incorporated on school buses to provide a warning buzzer and/or light to indicate to the driver that the parking brake has not been applied when the engine has been turned off and the transmission has been placed in the ''neutral'' position. The petitioner contacted Blue Bird Body Company, a school bus manufacturer, to determine if such a system could be made available. A copy of the response letter from the manufacturer was enclosed with the petition. Blue Bird indicated that the warning system concept appears to have merit. However, the manufacturer cited several concerns with the concept. The primary concern was that incorporation of the warning system on some (newer) vehicles would result in inconsistencies in the fleet, whereby some vehicles would prompt the driver to apply the parking brake and other vehicles would not. Blue Bird suggested that if a driver became used to being prompted to applying the parking brake in a vehicle equipped with the warning system, then that driver may forget to apply the parking brake when operating a vehicle not equipped with the warning system.

Other concerns cited by Blue Bird included the proliferation of warning devices, which could result in driver dependence and/or confusion, issues on integrating this system with other warning devices and systems, and the need to deactivate the system after some preset time to prevent battery drain.

Blue Bird stated that if such a warning system were to be implemented, then it would recommend unilaterally applying it to all medium and heavy vehicles to avoid the situation of some vehicle types being equipped with the warning system and others not being equipped with the warning system. In Blue Bird's view, implementation of the warning system would also need to be accompanied by an extensive publicity and driver training program to familiarize drivers with the new system.

Blue Bird stated that because of these concerns, it would not make such a warning system available as standard equipment or as optional equipment. Blue Bird suggested that the school bus operator petition NHTSA to require such a system on all medium and heavy vehicles, so that appropriate research, study, and public comment could be addressed prior to such a system being introduced. The school bus operator, Schmitty & Sons School Buses, subsequently petitioned NHTSA to require such a warning system on a nationwide basis.

NHTSA decided to publish this request for comments prior to making a determination on whether to grant or deny the petition. If NHTSA determines that the petition should be granted, based on indications that there is a significant safety need, then it would begin the rulemaking process to propose amendments to the Federal Motor Vehicle Safety Standards (FMVSSs), in this case, FMVSS No. 105, Hydraulic and Electric Brake Systems, and FMVSS No. 121, Air Brake Systems. The rulemaking process, if it proceeds, will provide ample opportunity for concerned parties to further comment on all aspects of any proposed changes to the FMVSSs.

Parking Brake Requirements

FMVSS No. 105, Hydraulic and Electric Brake Systems, requires each vehicle with a gross vehicle weight rating (GVWR) of 10,000 lbs. (4536 kg) or less and each school bus with a GVWR greater than 10,000 lbs. to be equipped with a friction-type parking brake system, with a solely mechanical means to retain engagement (S5.2).

The standard requires the parking brake for a passenger car or a school bus with a GVWR of 10,000 lbs. or less to hold the vehicle on a 30 percent grade (up to the limit of traction on the braked wheels).

As an option, the standard permits a passenger car or school bus with a GVWR of 10,000 lbs. or less, equipped with a transmission that includes a parking mechanism, to use the parking mechanism in meeting the 30 percent grade holding requirement for the vehicle, if the parking mechanism must

be engaged to enable the ignition key to be removed (S5.2.2.1). If this option is used, there is a separate requirement for such vehicles to meet a 20 percent grade holding requirement with the parking brakes engaged and the parking mechanism disengaged (S5.2.2.2). The transmission parking mechanism is then subjected to a 2½-mph barrier impact test on level ground, which requires that the parking mechanism not become disengaged or fractured. In the context of these tests and requirements, the parking mechanism is a supplemental parking aid and is not the primary source of grade holding ability.

The parking brake system on a school bus with a GVWR greater than 10,000 lbs. must be capable of holding the vehicle stationary for five minutes on a 20 percent grade (S5.2.3). This grade holding requirement also applies to trucks, multipurpose passenger vehicles, or buses other than school buses, with a GVWR of 10,000 lbs. or less.

There is a supplemental requirement in FMVSS No. 114, Theft Protection, that requires passenger cars, trucks, and buses with a GVWR of 10,000 lbs. or less, equipped with an automatic transmission with a park position, to meet a 10 percent grade holding test (S4.2.1(b)) when the key has been removed and the transmission is locked in the park position.

FMVSS No. 135, Light Vehicle Brake Systems, which becomes effective for multipurpose passenger vehicles, trucks, and buses with a GVWR of 7,716 lbs. (3500 kg) or less, manufactured on or after September 1, 2002, requires a 20 percent grade holding ability using the parking brake with the vehicle at GVWR, and does not address the use of transmission parking mechanisms.

FMVSS No. 121, Air Brake Systems, which applies to trucks, buses (including school buses), and trailers equipped with air brakes, requires a 20 percent grade holding ability with the vehicle both empty and at GVWR, or optionally, a static retardation force test may be used which incorporates requirements based on GVWR or gross axle weight rating (GAWR) depending on vehicle type. This standard also does not address the use of transmission parking mechanisms.

Additional requirements are included in FMVSS Nos. 105 and 135 for visual warning indicators (brake light) to indicate that the parking brake is engaged, and both standards include requirements for maximum force levels in applying the parking brake mechanism for the grade holding tests. FMVSS No. 121 includes requirements for a parking brake application control that is separate from the service brake control, and includes parking brake application and release timing requirements. It also specifies parking brake performance requirements with certain system failures.

Automatic Transmission Shift Sequence and Parking Functions

FMVSS No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect, requires that, if a park position is included in the automatic transmission shift lever sequence, the park position shall be located at the end of the shift lever sequence adjacent to the reverse drive position (S3.1.1). This shift pattern is provided universally on light vehicles equipped with automatic transmissions, either using a steering column shifter or a shifter located on the floor console.

On some medium vehicles and most, if not all, heavy vehicles equipped with automatic transmissions, a park position is not included in the automatic transmission shift sequence. A transmission parking mechanism in a heavy vehicle would be subjected to a very high loading that makes such a mechanism impractical. Hence, to park such a vehicle, the driver places the transmission in the neutral position and then applies the parking brakes, either using the dash-mounted valve for air-braked vehicles or the parking brake lever for hydraulically-braked vehicles.

The lack of a parking position in certain medium and heavy vehicles equipped with automatic transmissions should provide a cue to the driver that the vehicle is not in park. As the vehicle can only be shifted into the neutral position, the shift sequence is substantially different than for a vehicle in which the shift lever is moved from either a forward or reverse drive position to the park position located at the end of the shift sequence. The cue to a driver that the vehicle has only been shifted to the neutral position is intended to help the driver realize that the parking brake must be engaged to park the vehicle. The absence of this awareness could result in roll away incidents.

A Society of Automotive Engineers (SAE) technical paper, Allison Transmission's New Family of Transmissions: The 1000/2000 Series (ref. SAE technical paper 973278, Nov. 1997), includes market research indicating that customer preference for heavy duty automatic transmissions incorporating a park position/parking pawl mechanism resulted in developing standard and optional (depending on transmission model and GVWR) parking features into that company's new line of automatic transmissions for vehicles with GVWRs up to 26,000 lbs. (11,800 kg). NHTSA requests comments on trends to incorporate parking mechanisms in heavy duty automatic transmissions, especially in the GVWR range of typical school buses.

NHTSA is also aware that systems are available which automatically apply the parking brake when the transmission shift lever is moved to the ''park'' position. In this configuration, the automatic transmission does not incorporate a parking pawl, but a switch located on the transmission activates a mechanism that automatically applies the parking brake. NHTSA requests comments on the availability of such systems, in particular for school buses, equipped with either air or hydraulic braking systems.

Driver Training and Skill

The Federal Highway Administration (FHWA) requires certain operators of commercial motor vehicles to have a commercial driver's license (CDL). The FHWA's definition (49 CFR 383.5) of a commercial motor vehicle includes: vehicles with a GVWR or gross combination weight rating (GCWR) of 26,001 lbs. (11,794 kg) or more; vehicles designed to transport 16 or more passengers, including the driver; and vehicles of any size used to transport hazardous materials in a quantity sufficient to require placarding. The definition covers commercial motor vehicles operated in interstate, intrastate, and foreign commerce, and also includes vehicles that are controlled and operated by Federal, State, or local government agencies. Therefore, a driver who operates a school bus with 16 or more seating positions (including the driver) must have a CDL.

Since April 1, 1992, drivers of commercial motor vehicles have been required to obtain a CDL issued by their State of residence in accordance with minimum Federal requirements. The State must administer knowledge and skill tests of CDL applicants to ensure the driver has the ability to safely operate a commercial motor vehicle. The knowledge and skills test provisions in Subpart G of 49 CFR part 383 require that each driver demonstrate proficiency in performing a pre-trip inspection, using the vehicle's controls and emergency equipment, operating the vehicle in traffic, and proper braking procedures. Operators of passenger-carrying vehicles must obtain a passenger endorsement on their licenses for which the driver must have demonstrated knowledge of the proper procedures for loading and unloading

passengers, proper use of emergency exits, and proper responses to emergency situations such as fires and unruly passengers. The FHWA's CDL requirements are intended to help reduce or prevent truck and bus crashes, fatalities, and injuries by requiring drivers to have a single CDL and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

Subpart G—Required Knowledge and Skills, of the CDL standards, includes a reference to vehicle controls in S383.111(c)(1), which states that the driver shall be familiar with the purpose and function of the controls and instruments commonly found on commercial motor vehicles. A similar reference is included in the appendix to subpart G in the sample requirements provided for a State to use in its CDL licensing program. There are also specific references in Subpart G to air brake system operation for drivers qualifying on air-braked vehicles. There are no specific references to the use of parking brake controls.

Since the parking brake and transmission controls can vary among different types of commercial motor vehicles, including school buses, it may not be appropriate to address this issue in specific detail at the federal or state regulatory (CDL requirements) level. NHTSA believes that this is most appropriately addressed at the fleet level, that is, each fleet is responsible to ensure that each driver is trained in the proper use of the controls of the vehicles in that fleet. NHTSA is soliciting input on this issue in the *Questions for Comment* section below, specifically, if other countermeasures to a warning system, such as additional driver training, should be considered.

Problem Discussion

The school bus incidents reported in the petition could be attributable to the school bus drivers' regular use of both light vehicles and medium/heavy vehicles, and the differences in transmission controls between these vehicle groups when they are equipped with automatic transmissions. In practice, light vehicles, including passenger cars, light trucks, multi-purpose passenger vehicles, and many small buses, include a ''park'' position in the transmission position selections, when these vehicles are equipped with automatic transmissions. A park position is not required by any FMVSS, but is provided universally as a convenience feature in light vehicles equipped with automatic transmissions, so that the parking brakes do not always need to be applied. The driving habits of passenger car drivers vary, with some drivers always applying the parking brakes in addition to selecting the transmission parking position, while others may not apply the parking brakes or may do so only when parked on steep grades. Furthermore, passenger cars equipped with manual transmissions require drivers to use the parking brakes for grade holding ability, with some drivers also leaving the transmission in a gear position and some with the transmission in neutral.

While some medium trucks with automatic transmissions include a park position in the automatic transmission shift sequence, especially those with GVWRs slightly above 10,000 lbs., many medium and heavy truck automatic transmissions do not have a parking mechanism/shift position. It would be impractical for such a parking mechanism to provide substantial grade holding ability, especially in higher GVWR applications. As a result, all grade holding ability is provided by the parking brakes. The problem referred to by the school bus operator appears to be that some drivers are used to having a park position with an automatic transmission in a light vehicle, while no such park position is provided in the medium and heavy vehicles equipped with heavy-duty automatic transmissions. In the instances cited by the petitioner, the drivers may have mistakenly believed that the bus was held in ''park'', while in fact the parking brake still needed to be applied.

NHTSA also believes that school bus drivers may not be as familiar with the operation of their school buses compared to drivers of typical commercial vehicles. Many school bus drivers are employed on an hourly or part-time basis, as well as on a seasonal basis, compared with many truck drivers that drive commercial vehicles on a much more regular basis and therefore may be more familiar with the operation, equipment, and controls of their vehicles.

Safety Problem Size Assessment

The petitioner referenced several accidents in Minnesota in which roll-away buses struck another vehicle. In a telephone conversation with the petitioner, it was learned that two of the cases occurred in the petitioner's organization, and one other school bus operator in Minnesota had experienced this problem.

A search of the Office of Defects Investigation complaints database was made to determine if problems with parking brakes have been reported by vehicle owners or operators. The search included medium and heavy trucks and school buses, with coverage from model years 1991 through 1998. The search revealed complaints on one heavy truck, one medium truck, two buses (one of these known to be a school bus), and five motorhomes. The reported complaints included one instance of parking brakes automatically applying on an axle, one complaint on the parking brake control due to an accidental release of the parking brakes, five complaints of parking brakes failing or not holding on an incline, and two complaints of broken components in the parking brake system. There were no complaints related to vehicle roll away due to a driver failing to engage the parking brakes.

The coding schemes for General Estimates Systems (GES) and Fatality Analysis Reporting System (FARS) databases of property damage and injury- or fatality-producing crashes were determined to not be suitable for identifying roll-away crashes due to failure to apply the parking brakes. If there are any such cases, the cause may be noted on a police accident report, but the data base coding would not indicate this. Also, a check of the special crash investigations program for school buses did not indicate that any such cases had occurred, although it should be noted that only a limited number (less than a ten percent sample) of school bus crashes are investigated each year. There is one known instance of a crash resulting from the release of a school bus parking brake, which resulted in two fatalities. However, this crash is related to the location of the parking brake controls and protection from inadvertent release.

There may be instances in which a school bus (or other medium or heavy vehicles) rolled away but no crash or injury resulted. The main purpose of this request for comments is to determine the magnitude of the problem and whether the petitioner's reported incidents are isolated occurrences or are indicative of a more widespread problem.

Effectiveness of a Warning System

NHTSA requests comments on the potential effectiveness of a warning system that activates when the engine is turned off, the transmission is in neutral, and the parking brakes have not been engaged. At this time, NHTSA is considering such a system only for vehicles equipped with automatic transmissions without a parking position, but welcomes comments on application of such a system for vehicles equipped with manual transmissions as well.

Assuming that the warning is sufficiently loud and/or visible to effectively warn the driver under the specified condition, NHTSA also requests comments on situations in which the warning system would not activate and thus the vehicle could still roll away. If a driver were to park the bus without turning off the engine, such as during a short break while keeping the heat on in cold weather, or while having minor service performed at a maintenance facility, the warning system would not be activated. Likewise, if the driver had to leave the driver's seat momentarily (while leaving the engine running) to check on a situation on the bus or outside of the bus, the warning system would not be activated. Finally, a driver could, for some reason, turn the bus off without putting the transmission in neutral, in which case the warning would not activate.

NHTSA also requests comments on potential negative effects of a warning system. While the warning system is envisioned only as a device to warn the driver in rare occasions in which the parking brake had not been applied, it is possible that a driver could come to rely on the warning system as a prompt to apply the parking brake. Under such a scenario and given any of the situations cited above, the driver would not be prompted to apply the parking brake. Other points that were also raised by Blue Bird, which should be considered, include drivers switching between buses that are equipped with the warning system and buses not equipped with the warning system, and the proliferation of warning systems (e.g., emergency exit door alarm and starter interlock requirements in FMVSS No. 217, low air pressure warnings, etc.) that could cause confusion among drivers.

Questions for Comment

Prior to making a determination on whether to grant or deny the petition from Schmitty and Sons School Buses, NHTSA requests additional information relative to the parking brake warning system proposed for school buses and its potential application to other medium and heavy vehicles.

1. Can data be provided on bus roll away instances to assist NHTSA in determining the problem size? Any information on bus roll away crashes, resulting injuries or property damage, and whether such incidents occurred during student loading/unloading operations or in other circumstances, such as in bus parking areas, are requested. The focus of these data should be instances in which the parking brake was not applied.

2. In lieu of hard data on roll away incidents that have occurred, NHTSA requests comments regarding to what extent the trend from equipping school buses with manual transmissions to equipping them with automatic transmissions without a park position has on the increased likelihood for roll away incidents.

3. Of all school buses produced by a manufacturer, or purchased by a school bus operator, what are the current and projected trends on switching from manual to automatic transmissions, specifically in the higher weight classes in which automatic transmissions do not have a park position?

4. What are the trends in incorporating parking pawls in heavy duty automatic transmissions, especially in the GVWR range of typical school buses? What is the availability of automatic parking brake application systems for air- and hydraulic-brakes school buses? In the foreseeable future, what is the likelihood that all school buses will be equipped with either of these systems, or have them available to those purchasers that desire such features?

5. Are differences in driver familiarity with vehicle operation considered to be a factor for school buses versus other commercial vehicles, considering that many school bus drivers are employed on a part-time or seasonal basis?

6. Would the petitioner's proposed system that activates when the engine is turned off, the bus is in neutral, and the parking brake is not applied, be considered an effective warning system in light of the issues raised in the section *Effectiveness of a Warning System* above? Are there other consequences of the warning system to consider? Would it be appropriate to consider a warning system for school buses also equipped with manual transmissions?

7. Would it be appropriate to expand the petitioner's request and consider a warning system that activates when a school bus' engine is turned off, the parking brake is not applied, and the transmission is in any position other that ''park?'' This would address situations where the school bus is left in gear and the parking brake is not applied. Are there known instances of school buses rolling away in these circumstances?

8. Should other countermeasures (either within or excluding the Federal Motor Vehicle Safety Standards, or the Federal Motor Carrier Safety Regulations) be considered, such as additional driver training, warning labels, informational campaign, etc.?

9. For the warning system described (an audible warning when the specified conditions are met), will drivers be confused by another audible warning on school buses? Would it be helpful to supplement the audible warning with a visual warning (e.g., the brake warning lamp on the instrument panel could flash)?

10. Would a system that automatically applies the parking brake on school buses (for air- or hydraulic-braked vehicles) whenever the ignition is turned to ''lock'' or the key is removed be acceptable to drivers, fleets, and school bus manufacturers? Would an override switch be necessary for towing, maintenance, or other situations?

11. Should NHTSA consider expanding the application of the proposed (or an alternate) warning system to include vehicles other than school buses, for example, all buses, or all medium and heavy vehicles?

Procedures for Filing Comments

Interested persons are invited to submit comments on this request for comment. It is requested but not required that two copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 32, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: February 23, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–4947 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990204042–9042–01; I.D.123198B]

RIN 0648–AM09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Platforms in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for rulemaking and an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request for two Letters of Authorization (LOAs) from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) for the take of small numbers of marine mammals by harassment incidental to construction and operation of offshore oil and gas platforms at the Northstar and Liberty developments in the Beaufort Sea in state and Federal waters. BPXA has also petitioned NMFS for regulations to govern that take. In order to promulgate these regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application, and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than March 31, 1999.

ADDRESSES: Comments should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the draft environmental impact statement (DEIS) for Northstar may be obtained by contacting the U.S. Army Engineer District, Alaska, Regulatory Branch, P.O. Box 898, Anchorage, AK 99506–0898.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On November 30, 1998, NMFS received an application requesting a small take exemption under section 101(a)(5)(A) of the MMPA from BPXA to take marine mammals incidental to the construction and operation of offshore oil and gas platforms at the Northstar and Liberty developments in the Beaufort Sea in state and Federal waters.

BPXA proposes to produce oil from two offshore oil developments, Northstar and Liberty. These two developments will be the first in the Beaufort Sea that use a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System.

The Northstar Unit is located between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community. During 1998–1999 (year 1), a gravel island will be constructed this winter and spring, followed by construction work on the island during the 1999 open-water season. Incidental takes of whales and seals during this period are expected to be authorized under an Incidental Harassment Authorization (IHA) issued under section 101(a)(5)(D) of the MMPA (see 63 FR 57096, October 26, 1998). However, because of the possibility that construction might be delayed until after expiration of the IHA, work described in the cited **Federal Register** document may be conducted during the effectiveness period of these regulations. Following is a brief description of the proposed scope of work for Northstar and Liberty projects. For more detailed descriptions please refer to either the BPXA application or to the DEIS, both of which are available upon request (see **ADDRESSES**).

Northstar

The proposed construction activity includes the construction of several ice roads, one from West Dock and the Pt McIntyre drill site to the Northstar gravel mine and one from the mine site to Seal Island. In the second year of construction an ice road will be constructed parallel to the coast from Pt. McIntyre to the location of the pipeline crossing and then along the pipeline route to Seal Island. Construction of a gravel island work surface for drilling and oil production facilities will take place during the first winter and into the open water season. The transport and installation of the drill rig and associated equipment via the ice road, and the construction and installation of two 10 in (0.25 m) pipelines, one to transport crude oil and one for gas for field injection, will all occur during year 2. The two pipelines will be buried together in a single trench.

It is estimated that during the winter approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island, and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island. During the summer approximately 90 to 100 barge trips from Prudhoe Bay or Endicott are expected to support construction.

The operational phase will begin with drilling, which will continue for 2 years. Drilling is scheduled to begin in February 2000, using power supplied by diesel generators. This phase of drilling will continue until the power plant is operational in November 2000. Drilling will continue until February 2002, when all 23 development wells (15 production, 7 gas injection) are expected to be drilled. After drilling is completed, only production-related site activities will occur. In order to support operations at Northstar, the proposed operations activity includes the annual construction of an ice road from Pt. McIntyre to the shore crossing of the

pipeline and along the pipeline route to Seal Island. Ice roads will be used to resupply needed equipment, parts, foodstuffs, and products, and for hauling wastes back to existing facilities. During the summer, barge trips will be required between West Dock or Endicott and the island for resupply.

Year-round helicopter access to Northstar is planned for movement of personnel, foodstuffs and emergency movement of supplies and equipment. Helicopters will fly at an altitude of at least 1,000 ft (305 m), except for takeoffs, landings, and safe-flight operations.

Liberty

The BPXA Liberty development will be a self-contained offshore drilling/production facility located on a man-made gravel island with pipelines to shore. The facility will be constructed in Foggy Island Bay in approximately 22 ft (7 m) of water.

The proposed construction and production activities are similar to those for the Northstar development described previously, except that Liberty involves construction of a new island, located south of the barrier islands whereas Northstar is to be constructed on the existing remains of Seal Island, north of the barrier islands. Liberty construction will begin in December, 1999, ending in summer, 2001, with planned production startup in November, 2001. Construction may take 2 years or may be compressed into a single year. Well drilling is expected to be completed by February, 2003.

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the DEIS prepared for the Northstar development (Corps of Engineers (Corps), 1998) and in the BPXA application. This information is not repeated here but will be considered part of the record of decision for this rulemaking. A copy of the DEIS is available from the Corps upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several documents (e.g., Hill *et al*., 1997) including the BPXA application and the DEIS. Please refer to those documents for information on these species.

Summary of Impacts

Although the potential impacts to the several marine mammal species known to occur in these areas is expected to be limited to harassment, a small number of marine mammals may incur lethal and serious injury. The applicant also requests that in the unlikely event that a small number of marine mammals might be contacted by oil from an oil spill, that these takes also be covered by the regulations.

Sounds and non-acoustic stimuli are expected to be generated by vehicle traffic, ice cutting, pipeline construction, offshore trenching, gravel dumping, pile driving, vessel and helicopter operations, and general operations of oil and gas facilities (e.g., generator sounds and gas flaring). The sounds generated from construction operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of activity. The distance will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the animal receiving the sound. At times, some of these sounds are likely to be strong enough to cause avoidance or other disturbance reactions by small numbers of marine mammals. The type and significance of behavioral reaction is likely to depend on the behavior of the animal at the time of reception as well as the distance and level of the sound relative to ambient conditions.

Because of the potential impact to marine mammals, BPXA has requested NMFS to promulgate regulations under section 101(a)(5)(A) of the MMPA and issue two LOAs that would authorize the incidental taking.

National Environmental Policy Act (NEPA)

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). NMFS is a cooperating agency, as defined by the Council on Environmental Quality regulations (40 CFR 1501.6), on the preparation of this document. This DEIS, which supplements information contained in the petition and application, is considered part of NMFS' record of decision for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs.

On February 12, 1998 (63 FR 9015), the Minerals Management Service announced its intent to prepare a DEIS on the proposed development and production plan for the Liberty Project. That DEIS is not presently available to the public.

NMFS proposes that these two comprehensive documents will meet its NEPA responsibilities. These documents will be considered part of NMFS' record of decision for determining whether the activity proposed for receiving a small take authorization is having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence needs. Based upon a review of the respective Final EIS (FEIS) and the comments received during rulemaking, NMFS will (1) adopt the Corp and MMS FEISs, (2) amend the Corps and or MMS FEIS to incorporate relevant comments, suggestions and information, or (3) prepare supplemental NEPA documentation.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the BPXA request and the structure and content of the regulations to allow the taking. In particular, NMFS is requesting comment on its plan to propose a single set of 5-year regulations that would govern incidental takings for Northstar and Liberty construction and operation with issuance of annual LOAs for these activities; and provide for authorizations for additional Beaufort Sea oil and gas development projects after notice-and-comment rulemaking. If NMFS proposes regulations governing the taking, interested parties will be provided an additional comment period on the content of the proposed rule.

Dated: February 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5010 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 39
Monday, March 1, 1999

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

Food Safety and Inspection Service

[Docket No. 99–008N]

Beef Products Contaminated With Escherichia coli 0157:H7; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting on March 8, 1999, to discuss the policies addressed in its January 19, 1999. **Federal Register** notice, Beef Products Contaminated with *Escherichia coli* (*E. coli*) 0157:H7. The purpose of the meeting is to consider policy and regulatory changes to ensure that consumers are protected against meat products adulterated with *E. coli* 0157:H7. The Agency also solicits information on non-intact beef products, including ground beef, injected beef, and trimmings, for use in the Agency's risk assessment on *E. coli* 0157: H7 in beef products.

DATES: The meeting will be held March 8, 1999, from 9:00 a.m. to 4:00 p.m. Written comments must be received by March 22, 1999.

ADDRESSES: The meeting will be held at the Hotel Washington, 515 15th Street, NW, Washington DC. To register for the meeting, contact Ms. Shiela Johnson by telephone at (202) 501–7305 or (202) 501–7138 or by FAX at (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Ms. Johnson at the above numbers by March 4, 1999. If you are planning to present an oral comment at the meeting, please submit one original and two copies of the prepared comment to the FSIS Docket Clerk, Docket No. 99–008N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Send one orignial and two copies of all other comments to the Docket Clerk at the address listed above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D. Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW, Washington, DC 20250. Telephone number (202) 720–5627, fax number (202 690–0486.

SUPPLEMENTARY INFORMATION: On January 19, 1999, FSIS published the notice ''Beef Products Contaminated with *Escherichia coli* 0157:H7'' in the **Federal Register** (64 FR 2803). This notice contained FSIS' policy regarding beef products, including raw grown beef and non-intact beef products, contaminated with *E. coli* 0157:H7. The notice also afforded the public an opportunity to submit comments and recommendations regarding the Agency's policy and any regulatory requirements that might be appropriate to prevent the distribution of beef products adulterated with *E. coli* 0157:H7.

In addition to the opportunities for comment provided in the notice, FSIS has decided to hold a public meeting on March 8, 1999. The meeting will provide the public an opportunity to comment and discuss the policy announced in the January 19, 1999, notice and the public health risks associated with beef products contaminated with *E. coli* 0157:H7. Also, participants will be able to comment on FSIS's intention to expand its risk assessment of *E. coli* 0157:H7, which was announced in the **Federal Register** on August 18, 1998, (63 FR 44232) to include all non-intact beef products.

The Agency intends to make available a set of questions and answers that reflect its current thinking about its *E. coli* 0157:H7 policy. The Agency will announce the availability of this document in its Constituent Alert.

Done at Washington, DC, on February 25, 1999.

Thomas J. Billy,
Administrator.

[FR Doc. 99–5113 Filed 2–25–99; 1:45 pm]

BILLING CODE 3410–DM–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Electronic and Information Technology Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. This document gives notice of the dates, times, and location of the next meeting of the Electronic and Information Technology Access Advisory Committee (Committee).

DATES: The next meeting of the Committee is scheduled for March 29 and 30, 1999, beginning at 9:30 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meetings will be held at 1331 F Street, NW., Washington, DC, in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 39 (Voice); (202) 272–5449 (TTY). E-mail address: wakefield@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/eitaacmtg.htm.

SUPPLEMENTARY INFORMATION: On September 29, 1998, the Access Board published a notice appointing 23 members to its Electronic and Information Technology Access

Advisory Committee (Committee). 63 FR 51891 (September 29, 1998). The Committee will make recommendations to the Access Board on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. The Committee is composed of Federal agencies and Federal contractors; the electronic and information technology industry; organizations representing the access needs of individuals with disabilities; and other persons affected by accessibility standards for electronic and information technology. At its first meeting on October 15 and 16, 1998, the Committee took the following actions:

- Added Compaq Computers, Pitney Bowes, Sun Microsystems, and the Information Technology Industry Council to the Committee;
- Formed three subcommittees. One subcommittee will examine the definitions needed for the recommended standards. Another subcommittees will examine the various functions that are performed by electronic and information technology. These functions include creating, processing, transmitting, and interacting with information and the technology involved. A third subcommittee will begin the process of classifying the variety of products covered by the standards into product families;
- Created a listserv to facilitate communications between meetings. To subscribe to the listserv send an e-mail message to: listproc@trace.wisc.edu.; and
- Established a schedule of meeting dates. In addition to the meeting on March 29–30, 1999, the Committee will meet again on May 11–12, 1999.

At its second meeting on December 1 and 2, 1998, the Committee addressed the scope of the standards it will be recommending to the Access Board. This included defining the term ''electronic and information technology''. A three person group was appointed to develop a recommended definition and present it to the Committee at its January meeting. Additionally, four subcommittees were formed. These include: installation and setup, information presentation, control and operation, and user information. The subcommittees will examine these specific areas and identify access barriers in each area, and recommend standards that could lower or eliminate these barriers. The subcommittees will continue their work on the listserv.

At its third meeting on January 5–6, 1999, the Committee adopted a working definition for electronic and information technology based on the definition of information technology in the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)). The four subcommittees, created during the December meeting, continued work on their specified areas.

The Committee met for the fourth time on February 8–9, 1999, and shifted from identifying access barriers to developing functional standards to address the access barriers. A draft final report is expected to be discussed at the Committee's next meeting in March. The Committee also heard presentations from the Federal Acquisition Regulatory Council on how the Federal Acquisition Regulations are promulgated; a presentation by a vice president of the American National Standards Institute on how conformity to standards takes place; and, a member of the Chief Information Officers (CIO) Council who briefed the Committee on the duties of an agency's CIO.

The meetings are open to the public. There will be a public comment period each day for persons interested in presenting their views to the Committee. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real-time transcription will be available.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–4992 Filed 2–26–99; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (Committee).

DATES: The next meeting of the Committee is scheduled for April 21 through 23, 1999, beginning at 9:00 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meeting will be held at 1331 F Street, NW., Washington, DC, in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272-5434 extension 19 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/pvaacmtg.htm.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (Committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The Committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The Committee will meet on the dates and at the location announced in this notice. The meeting is open to the public. The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by April 12, 1999. Persons attending the meetings are strongly encouraged to use public transportation since parking is extremely limited. The accessible entrance to the Metro Center Metro Station is located approximately three blocks from the meeting site.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–4993 Filed 2–26–99; 8:45 am]

BILLING CODE 8150–01–P

CENSUS MONITORING BOARD

Census Monitoring Board Meeting

February 22, 1999.

ACTION: Notice of public meeting.

SUMMARY: This notice, in compliance with PL 105–119, sets forth the meeting date, time and place for the third business meeting of the full Census

Monitoring Board. The meeting agenda will include an examination of ongoing preparations by the Census Bureau for the 2000 Decennial Census.

DATES: The meeting will take place at 9:30 a.m., Monday, March 8, 1999.

LOCATION: The meeting will be in the Conference Center (building #3) at the U.S. Census Bureau, 4700 Silver Hill Road, Suitland, MD 20752.

FOR FURTHER INFORMATION: Census Monitoring Board. Phone: 301–457–5080 or 301–457–9900.

Fred T. Asbell,

Exective Director, Congressional Members.

Mark Johnson,

Exective Director, Presidential Members.

[FR Doc. 99–5070 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 990209046–9046–01]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In conformity with Title 13, United States Code (sections 61, 81, 182, 224, and 225), I have determined that annual data collected from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Manufacturing and Construction Division, on (301) 457–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2002. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys.

In 1998, the Census Bureau converted the Current Industrial Reports survey form names to reflect the switch from the old U.S. Standard Industrial Classification (SIC) system to the new North American Industry Classification System (NAICS). For example, the MA22F survey under the old SIC system is the MA313F survey under NAICS.

In accordance with the Paperwork Reduction Act (PRA), Public Law 104–13, the Office of Management and Budget (OMB) has approved these surveys under OMB Control Numbers 0607–0206, 0607–0392, 0607–0393, 0607–0395, 0607–0476 and 0607–0776. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233–0001.

NAICS	SIC	Survey title
MA313F	MA22F	Yarn Production.
MA313K	MA22K	Knit Fabric Production.
MA314Q	MA22Q	Carpets and Rugs.
MA315D	MA23D	Gloves and Mittens.
MA321T	MA24T	Lumber Production and Mill Stocks.
MA325A	MA28A	Inorganic Chemicals.
MA325B	MA28B	Inorganic Fertilizer Materials and Related Product.
MA325C	MA28C	Industrial Gases.
MA325F	MA28F	Paint and Allied Products.
MA325G	MA28G	Pharmaceutical Preparations, except Biologicals.
MA316A	MA31A	Footwear.
MA327C	MA32C	Refractories.
MA327E	MA32E	Consumer, Scientific, Technical, and Industrial Glassware.
MA331A	MA33A	Ferrous Castings.
MA331B	MA33B	Steel Mill Products.
MA331E	MA33E	Nonferrous Castings.
MA335J	MA33L	Insulated Wire and Cable.
MA332K	MA34K	Steel Shipping Drums and Pails.
MA333A	MA35A	Farm Machinery and Lawn and Garden Equipment.
MA333D	MA35D	Construction Machinery.
MA333F	MA35F	Mining Machinery and Mineral Processing Equipment.
MA333J	MA35J	Selected Industrial Air Pollution Control Equipment.
MA333L	MA35L	Internal Combustion Engines.
MA333M	MA35M	Air-conditioning and Refrigeration Equipment.
MA333P	MA35P	Pumps and Compressors.
MA332Q	MA35Q	Antifriction Bearings.
MA334R	MA35R	Computers and Office and Accounting Machines.
MA335A	MA36A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls.
MA335E	MA36E	Electric Housewares and Fans.
MA335F	MA36F	Major Household Appliances.
MA335H	MA36H	Motors and Generators.
MA335K	MA36K	Wiring Devices and Supplies.
MA334M	MA36M	Consumer Electronics.
MA334P	MA36P	Communication Equipment.
MA334Q	MA36Q	Semiconductors and Printed Circuit Boards.
MA334B	MA38B	Selected Instruments and Related Products.

NAICS	SIC	Survey title
MA334S	MA38R	Electromedical Equipment.

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

NAICS	SIC	Survey title
M311H	M20H	Animal and Vegetable Fats and Oils (Stocks).
M311J	M20J	Oilseeds, Beans, and Nuts (Primary Producers).
M311L	M20L	Fats and Oils (Renderers).
M311M	M20M	Animal and Vegetables Fats and Oils (Consumption and Stocks).
M311N	M20N	Animal and Vegetables Fats and Oils (Production, Consumption, & Stock).
M313P	M22P	Consumption on the Cotton System.
M327G	M32G	Glass Containers.
M331D	M33D	Aluminum Producers and Importers.
M331J	M33J	Inventories of Steel Producing Mills.
M336G	M37G	Civil Aircraft and Aircraft Engines.
M336L	M37L	Truck Trailers.
MQ311A	MQ20A	Flour Milling Products.
MQ313D	MQ22D	Consumption on the Woolen System and Worsted Combing.
MQ313T	MQ22T	Broadwoven Fabrics (Gray).
MQ315A	MQ23A	Apparel (short form).
MQ314X	MQ23X	Sheets, Pillowcases, and Towels.
MQ327D	MQ32D	Clay Construction Products.
MQ332E	MQ34E	Plumbing Fixtures.
MQ333W	MQ35W	Metalworking Machinery.
MQ335C	MQ36C	Fluorescent Lamp Ballasts.

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

In accordance with the PRA, Public Law 104–13, OMB has approved this survey under OMB Control Number 0607–0449. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233–0001.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series. Four data items in the survey provide interim statistics collected in the Census Bureau's economic censuses. These items (total company sales, total company employment, total expenditures, and federally-funded expenditures for research and development conducted within the company) are collected on a mandatory basis under the authority of Title 13. Responses to all other data collected for the NSF are voluntary.

In accordance with the PRA, Public Law 104–13, OMB has approved this survey under OMB Control Number 3145–0027. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233–0001.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

In accordance with the PRA, Public Law 104–13, OMB has approved this survey under OMB Control Number 0607–0175. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233–0001. I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: February 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–4873 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Reviews

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of

Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	County	Product
A–831–801	A–340	Armenia	Solid Urea.
A–832–801	A–340	Azerbaijan	Solid Urea.
A–822–801	A–340	Belarus	Solid Urea.
A–447–801	A–340	Estonia	Solid Urea.
A–833–801	A–340	Georgia	Solid Urea.
A–834–801	A–340	Kazakhstan	Solid Urea.
A–835–801	A–340	Kyrgyzstan	Solid Urea.
A–449–801	A–340	Latvia	Solid Urea.
A–451–801	A–340	Lithuania	Solid Urea.
A–841–801	A–340	Moldova	Solid Urea.
A–485–601	A–340	Romania	Solid Urea.
A–821–801	A–340	Russia	Solid Urea.
A–842–801	A–340	Tajikistan	Solid Urea.
A–843–801	A–340	Turkmenistan	Solid Urea.
A–823–801	A–340	Ukraine	Solid Urea.
A–844–801	A–340	Uzbekistan	Solid Urea.
C–508–605	C–286	Israel	Industrial Phosphoric Acid.
A–508–604	A–366	Israel	Industrial Phosphoric Acid.
A–423–602	A–365	Belgium	Industrial Phosphoric Acid.
A–489–602	A–364	Turkey	Aspirin.
A–122–605	A–367	Canada	Color Picture Tubes.
A–588–609	A–368	Japan	Color Picture Tubes.
A–580–605	A–369	Korea (South)	Color Picture Tubes.
A–559–601	A–370	Singapore	Color Picture Tubes.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information:

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''http://www.ita.doc.gov/import—admin/records/sunset/''.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties:

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations,* if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and

domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: February 23, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–5023 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On September 29, 1998, the U.S. Department of Commerce published the preliminary results of the new shipper administrative review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') (''*preliminary results*'') (63 FR 51895). This review covers six exporters[1] of the subject merchandise to the United States. The period of review is April 1, 1997, through September 30, 1997. We gave interested parties an opportunity to comment on our preliminary results.

We have determined that U.S. sales of brake rotors have not been made below the normal value, and we will instruct the U.S. Customs Service not to assess antidumping duties for the six PRC exporters subject to this review.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION: 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 U.S. Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR part 351 (1998).

Background

On September 29, 1998, the Department published in the **Federal Register** the preliminary results of its new shipper administrative review of the antidumping duty order on brake rotors from the PRC (*see preliminary results*). In October and November 1998, the Department conducted verification of the questionnaire responses of the six respondents. On November 10, 1998, the Department published in the **Federal Register** a notice of postponement of the final results until no later than February 23, 1999 (63 FR 63025). On December 1, 1998, the petitioner[2] withdrew its request for a hearing in this proceeding. Since the six respondents never requested a hearing and the petitioner withdrew its original request for one, no hearing was held in this case. From December 4, 1998, through January 7, 1999, the Department issued its verification reports. On January 21, 1999, the petitioner submitted its case brief. CNIM, LABEF, Haimeng, GREN, Winhere, and ZLAP (hereafter referred to as the six respondents) did not submit case briefs. On January 28, 1999, the six respondents submitted rebuttal briefs.

Scope of Order

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Period of Review

The period of review (''POR'') covers the period April 1, 1997, through September 30, 1997.

Separate Rates

In proceedings involving non-market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. One of the respondents, Winhere, is located in the PRC and is wholly-owned by private individuals. Two respondents (*i.e.*, Haimeng, ZLAP) are joint ventures between PRC and foreign companies. The three other respondents are either wholly owned by all the people (*i.e.*, CNIM) or collectively owned (*i.e.*, GREN, LABEF). Thus, for all six respondents, a separate rates analysis is

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[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (Sunset Regulations, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] The six exporters are China National Machinery Import & Export Company (CNIM), Laizhou Auto Brake Equipments Factory (LABEF), Longkou Haimeng Machinery Co., Ltd. (Haimeng), Qingdao Gren Co. (GREN), Yantai Winhere Auto-Part Manufacturing Co., Ltd. (Winhere), and Zibo Luzhou Automobile Parts Co., Ltd. (ZLAP).

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*''), 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in *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 the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988, (''the Industrial Enterprises Law''); ''the Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988 (''the Enterprise Registration Regulations;'' the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC''; the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''); and the 1994 ''Foreign Trade Law of the People's Republic of China.''

In prior cases, we have analyzed these laws and have found them to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' joint ventures, privately owned enterprises or collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*''), 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* (''*Drawer Slides*''), 60 FR 29571–29576 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the six respondents mentioned above. *See* Comment 1 in the ''Interested Party Comments'' section of this notice for further discussion.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices (''EPs'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide and Furfuryl Alcohol*).

Each respondent asserted the following: (1) It establishes its own EPs; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.

As explained below, at verification, the Department found no evidence of government involvement in each respondent's business operations. *See* Comment 2 in the ''Interested Party Comments'' section of this notice for further discussion.

Specifically, at verification, Department officials examined sales documents that showed that each respondent negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that each respondent received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda such as appointment notices and notes on company meetings which demonstrated that each respondent selected its own management. *See* Department verification reports for CNIM at pages 5–7 and exhibits 1–6 and 16; for LABEF at pages 6–7 and exhibits 2–5; for Haimeng at pages 5–6 and exhibits 1–5, 7 and 17; for GREN at pages 5–6 and exhibits 3–4, 6, 9 and 19; for Winhere at pages 4–6 and exhibits 1–6 and 16; and for ZLAP at pages 5–7 and exhibits 18, 19 and 24. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we have determined that the six respondents have each met the criteria for the application of separate rates. *See Notice of Final Determination at Less Than Fair Value: Persulfates from the Peoples Republic of China*, 62 FR 27222 (May 19, 1997).

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at less than fair value (''LTFV''), we compared the EP to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the PRC exporter to unaffiliated parties in the United States prior to importation into the United States and constructed export price methodology was not warranted based on the facts of record. We calculated EP based on the same methodology used in the preliminary results with the following exceptions: (1) we revised our surrogate value calculations for marine insurance and foreign brokerage and handling fees to reflect correction of mathematical errors (*see* Comment 4 in the ''Interested Party Comments'' section of this notice for further discussion); and (2) we used the verified foreign inland freight distances to value freight expenses incurred for transporting the subject merchandise to the port of exportation (*see* Comment 5 in the ''Interested Party Comments'' section of this notice for further discussion).

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. We determined that India is a country comparable to the PRC in terms of overall economic development (*see* Memorandum from Office of Policy to Louis Apple, dated January 22, 1998). In addition, based on publicly available information placed on the record, we determined that India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the companies in the PRC which produced the subject merchandise for the exporters which sold the subject merchandise to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesian values.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of surrogate values, *see* the Final Results Valuation Memorandum from the Team to the File, dated February 23, 1999 (''*Final Results Valuation Memorandum*'').

We calculated surrogate values based on the same methodology used in the preliminary results with the following exceptions: (1) we revised our calculation for factory overhead, selling, general and administration expenses (''SG&A''), and profit to correct for mathematical errors (*see* Comment 4 in the ''Interested Party Comments'' section of this notice for further discussion); (2) we corrected, where appropriate, clerical errors found at verification; (3) we assigned an additional freight amount to ZLAP for using an unaffiliated transportation company to move the unfinished castings from the casting workshop to the processing workshop which had not been accounted for in our preliminary results; and (4) we used the verified supplier distances to value freight expenses incurred for the transportation of materials to the factory (*see* Comment 5 in the ''Interested Party Comments'' section of this notice for further discussion).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. We received comments only from the petitioner. We received rebuttal comments only from the six respondents.

General Issues

Comment 1: Procedure for Renewing Business Licenses As Evidence of PRC Government Control

The petitioner contends that the six respondents have not met the *de jure* and *de facto* absence of government control criteria because the procedure by which PRC companies renew their business licenses with provincial administrations for industry and commerce in the PRC (''administration bureaus'') is evidence of *de jure* control. Specifically, the petitioner argues that the record shows that the renewal of each respondent's business license is conditioned on providing the administration bureau in each respondent's respective province relevant documentation such as balance sheets, profit and loss statement, articles of association and feasibility reports. For example, the petitioner alleges that both Haimeng and Winhere are controlled by the PRC government because each respondent provided the administration bureau a copy of its feasibility report and/or articles of association. Specifically, the petitioner contends that Winhere's articles of association state that in order for the articles to take effect, they must be approved by the Administrative Committee of Yantai Economic and Technical Development Zone (''YETDZ''). The petitioner contends that because YETDZ is a PRC government agency, the need for it to approve Winhere's articles of association or review Winhere's feasibility report is evidence of government control over the operation and management of Winhere. With regard to Haimeng, the petitioner contends that because Haimeng filed a feasibility report with the Longkou Foreign Economics and Trade Committee (''LFETC'') (*i.e.,* a PRC government entity), this act is further evidence of government control over the operations and management of Haimeng. The petitioner maintains that although the respondents did not specify in their submissions or questionnaire responses all of the documentation they provided to provincial administration bureaus, the Department should consider the existence of this PRC government requirement for business license issuance or renewal to indicate PRC government *de jure* control.

The six respondents maintain that the submission of financial data to PRC administration bureaus is not proof of PRC government control. Citing the Department's verification reports, the respondents maintain that the Department reviewed the documents submitted by all respondents at verification and that these documents establish an absence of *de jure* control. The respondents further state that under the Enterprise Registration Regulations, PRC companies are required to submit annual financial data and to report the list of names of the company board of directors to PRC administration bureaus in order to maintain their business licenses. According to the respondents, providing such information is a regulatory requirement and by no means indicates government control of a PRC company's export activities. The respondents also state that the petitioner has provided no rational explanation for why the Department should suspect that there is hidden PRC government control behind each respondent's basic regulatory filing requirement. Finally, the respondents state that the Court of International Trade (''CIT'') has approved of the Department's separate rate analysis, particularly the Department's review of PRC exporters' business licenses, articles of association, and other corporate documentation as

evidence of *de jure* independence from government control. Therefore, the respondents contend that in light of the substantial evidence on the record of this proceeding demonstrating each respondent's *de jure* independence from government control, the Department should reject the petitioner's argument. In support of their arguments, the respondents cite to *Writing Instrument Mfrs Ass'n.* v. *United States Department of Commerce,* 984 F. Supp. 629, 642–43 (CIT 1997); *Sigma Corp.* v. *United States,* 841 F. Supp. 1255, 1266 (CIT 1993); and *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp.1088, 1014 (CIT 1992). *DOC Position.*

We agree with the six respondents based on the Department's past practice in analyzing the existence or absence of *de jure* government control over PRC exporters' business activities. We find that the petitioner has misapplied the separate rates test as articulated in *Silicon Carbide.* With regard to the issue of business licenses, in prior cases, we have analyzed the Enterprise Registration Regulations, which outlines the requirements PRC companies must follow in order to receive or renew a business license. Specifically, articles 5 and 15 of this PRC law state that a PRC company applying for a business license with a state or provincial industrial and commercial bureau must provide a copy of its organizational rules and regulations, capital credits certificate, capital verification certificate and capital guarantee, and other related documents and proofs. Since *Silicon Carbide,* we have interpreted this article to mean that PRC companies, upon applying or renewing their business license, must demonstrate to the business license issuing authority that they are incorporated and have the capital to conduct business within the scope of their operation. *See, e.g., Silicon Carbide,* 61 FR 22588, 22589. For some companies, the documents they have been required to provide to administration bureaus to show that they qualify for a business license have included a copy of the financial statement (which shows the company's capital) and articles of association or feasibility report (*i.e.,* business plan) (especially if the company is a start-up company). *See, e.g.,* article 15 of the Enterprise Registration Regulations.

With regard to Winhere, verification exhibits (*i.e.,* exhibits 1, 3 and 4) show that the feasibility report and articles of association are documents which note the company's investment capital situation, business plan, organizational structure, and general profit projections. This type of documentation, which Winhere provided YETDZ for receiving its business license, is consistent with article 15 of the Enterprise Registration Regulations and, as such, is a routine regulatory requirement and not evidence of *de jure* government control over export activities. With regard to Haimeng, verification exhibits (*i.e.,* exhibits 1 through 3) show that Haimeng's feasibility report notes the investment capital, scope of production, foreign and domestic investment equipment, joint-venture agreement, general sales and market plan, organizational structure, and general profit projections. This feasibility report along with the articles of incorporation, provided by Haimeng to the LFETC for receiving its business license, is consistent with article 15 of the Enterprise Registration Regulations and, as such, is a routine regulatory requirement and not evidence of *de jure* government control over export activities. We have also found that this business license requirement applies not only to PRC companies that are ''owned by the whole people,'' but also to other types of ownership such as joint ventures or collectively owned enterprises. *See, e.g.,* article 2 of the Enterprise Registration Regulations.

Based on the foregoing discussion, we find the petitioner's claim that the procedure by which PRC companies must renew their business licenses is evidence of *de jure* control over export activities to be without merit and inconsistent with our analysis of this issue in previous PRC cases. As stated in the ''Separate Rates'' section above, we have found the PRC law referred to above, along with other PRC laws such as the Industrial Enterprises Law, the 1990 Regulation Governing Rural Collectively-Owned Enterprises of PRC, the 1992 Business Operation Provisions, and the 1994 Foreign Trade Law of the People's Republic of China, to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' joint ventures, privately owned enterprises or collectively owned enterprises.

Comment 2: Lack of Detail Contained in the Verification Reports

The petitioner claims that the Department's verification reports are not sufficiently detailed in order for the petitioner to evaluate the comprehensiveness and accuracy of the verification process, and whether the respondents have demonstrated *de jure* and *de facto* absence of government control over their export activities. The petitioner states, among other things, that the verification reports in general contain vague, broad statements and conclusions. Specifically, the petitioner points to the sections of each respondent's verification report where the Department discusses its examination of (1) the business licenses and articles of incorporation; (2) the restrictions on how export revenue is used; and (3) the sales terms, prices and contractual correspondence for pre-selected sales, in particular, as sections lacking detail. The petitioner states that the lack of detail in the verification reports indicates that the Department did not sufficiently examine the separate rates issue at verification. Finally, the petitioner contends that the lack of content in the verification reports has injured petitioner's right to a fair administrative procedure and sets a poor precedent for future cases.

The six respondents contend that the Department's verification procedures were consistent with the verification procedures conducted in other PRC antidumping cases. Furthermore, the respondents suggest that the petitioner's complaints about the vagueness of and lack of detail in the Department's verification reports result from the petitioner's unfamiliarity with the respondents' submissions and the procedures described in the Department's verification outlines. Finally, the six respondents contend that the petitioner has offered no record evidence and only speculative theories to contradict the substantial evidence supporting a finding of *de jure* and *de facto* absence of government control. Therefore, the six respondents maintain that the Department should reject all of the petitioner's arguments challenging the Department's verification procedures.

DOC Position

We agree with the six respondents. In conducting our verification of each respondent's response, we examined substantial documentation the respondent maintained in the ordinary course of business such as financial statements, sales records, sales negotiation documentation, payment and bank deposit documentation, and bank account activity records to determine if the respondent met the criteria for *de jure* and *de facto* absence of government control based on the separate rates criteria specified in the verification outline. The petitioner claims that because the Department did not provide a detailed description in the verification reports of all information contained in the documents examined at verification that the Department did not sufficiently examine the separate rates issue at verification. The petitioner's claim is without merit. We

examined each respondent's available documentation and specifically requested copies of all examined documentation as verification exhibits on the separate rates issue. See verification reports for the six respondents at sections entitled ''De Jure Absence of Government Control,'' and ''De Facto Absence of Government Control.'' Based on our corroboration of the statements each respondent made regarding an absence of *de jure* and *de facto* government control in its questionnaire response with information contained in the relevant verification exhibits for each respondent, and based on the Department's review of the applicable PRC laws regarding separate rates in previous NME cases, we find that there is substantial evidence supporting a finding of *de jure* and *de facto* absence of government control for each respondent in this proceeding.

Comment 3: Visit to PRC Ministry of Machinery Industry (''MMI'') and Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'')

The petitioner contends that the Department should have visited the PRC government offices of MMI and MOFTEC as requested in its December 23, 1998, letter for purposes of examining the separate rates issue. The petitioner contends that the Department's failure to visit MMI and MOFTEC has made it impossible to verify completely the extent of PRC government control over the export activities of each respondent. The petitioner asserts that when Department officials visited these two PRC government entities in the LTFV investigation, the Department was denied access to important information and, as a result, the Department used facts available in the final determination for certain companies. The petitioner alleges that in this review, all six respondents have withheld information demonstrating that the PRC government, through MMI and MOFTEC, exercise control over their operations. Therefore, the petitioner contends that none of the six respondents should be entitled to a separate rate. As evidence that at least one respondent is controlled by PRC government entities, the petitioner points to a Department official's handwritten note on CNIM's articles of association, claiming that this notation indicates that CNIM is required by MOFTEC to furnish its sales volumes to MOFTEC and thus is controlled by MOFTEC. In addition, the petitioner suggests that evidence gathered during the LTFV proceeding indicates that dealings with trading companies were handled by MOFTEC and that this connection is evidence of PRC government control. The petitioner states that because the Department did not and does not plan to conduct a visit of MMI and MOFTEC in the context of this review, the Department should resort to the use of facts available in the final results.

The six respondents argue that the petitioner's allegations concerning the relationship of the respondents with MOFTEC and the MMI are based on unsubstantiated speculation. The six respondents also contend that the petitioner's allegation that the respondents withheld relevant and material information about their relationship with MMI and MOFTEC is unfounded. The six respondents assert they have had no communications or relationship with MMI and MOFTEC officials. With regard to the petitioner's specific allegation that CNIM furnished MOFTEC with its sales volumes, CNIM states that the handwritten note in CNIM's articles of association is the reply of CNIM officials to the Department official's question concerning the reference to MOFTEC in CNIM's articles of association. Specifically, CNIM's reply reflects that CNIM furnished MOFTEC with this information for statistical purposes (see exhibit 20A of the verification report). The respondent also states that the Department examined relevant documents and asked probative questions of CNIM personnel regarding all aspects of the issue of government control and found no evidence of such control. Therefore, the respondents maintain that based on a thorough examination by Department officials of documentation and statements furnished by the respondents at verification, the Department should find an absence of *de jure* and *de facto* government control for all six respondents.

DOC Position

We agree with the six respondents. There is nothing on the record of this proceeding that suggests that a Department visit to MMI or MOFTEC is warranted. In the LTFV investigation, the petitioner provided us with documentary evidence in support of its claim that two respondents were still controlled by the PRC government, which prompted the Department to visit MMI. Thus, in the LTFV investigation, documentation submitted by the petitioner justified the Department's visit to MMI in order to examine in greater depth the relationship between MMI and two respondents in the LTFV proceeding. However, on the record of this administrative review, we have no evidence of a similar relationship between any of the six respondents and MMI or MOFTEC. Therefore, we determined that there was no basis on which to visit MMI or MOFTEC.

Furthermore, the petitioner incorrectly claims that the same situation with regard to the two respondents in the LTFV investigation applies to all six respondents in this review by placing on the record from the LTFV proceeding the Department's verification report at MMI. We find that the information in that report has no bearing on our findings in this segment of the proceeding. Specifically, the information in the MMI verification report from the LTFV investigation contained information on government control specific to two PRC companies which are not part of this review. In contrast, in this review, there is substantial evidence on the record which indicates that none of the six respondents are subject to government control. There is no evidence on this record to the contrary, and we find that the petitioner's claim that the six respondents have withheld information on the separate rates issue to be without merit. With regard to the petitioner's specific allegation that CNIM furnished MOFTEC with its sales volumes and that this event constitutes government control, we find that CNIM's explanation contained in the verification exhibit in response to our question on this matter is acceptable and does not indicate government control over export activities. Moreover, it is not unusual for CNIM or any other PRC company to provide MOFTEC with sales statistics. For example, in numerous antidumping cases involving products from the PRC, the Department has sent initial antidumping questionnaire surveys (*i.e.*, mini-section A questionnaires) to MOFTEC to gather information from which we could select mandatory respondents, and these questionnaires have requested total sales quantity and value data from each PRC exporter of the subject merchandise. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53192 (October 10, 1996).

Comment 4: Calculation of Foreign Brokerage and Handling and Marine Insurance Values, and Factory Overhead, SG&A and Profit Percentages

The petitioner contends that in the preliminary results, the Department made mathematical errors in calculating

the foreign brokerage and handling and marine insurance values. Specifically, the petitioner contends that since the Department used the financial data of five Indian producers of the subject merchandise to calculate the surrogate value percentages for factory overhead, SG&A and profit, the Department erred in calculating the surrogate percentages because it calculated average percentages using a denominator of seven instead of a denominator of five. The petitioner requests that the Department correct these errors for the final results.

The six respondents agree that the arithmetic errors made in the Department's calculation of the surrogate values mentioned above should be corrected for the final results.

Doc Position

We agree with both the petitioner and the respondents and have made the appropriate corrections in our final results. *See Final Results Valuation Memorandum* for further details.

Comment 5: Application of Facts Available to Respondents' Reported Distances For Foreign Inland Freight and Suppliers

The petitioner maintains that at verification the Department did not examine all of the transportation distances (*i.e.*, foreign inland freight and supplier distances) reported by the respondents because the Department's verification reports did not note that all reported distances were examined. Therefore, the petitioner contends that because the Department's verification reports noted errors in the transportation distances that five respondents (*i.e.*, CNIM, LABEF, GREN, Winhere, and ZLAP) reported in their responses, the Department should find the distances reported by the companies to be unreliable and thus resort to facts available.

The six respondents state that there is no basis for the application of either facts available or adverse inferences to the reported transportation distances. Specifically, the six respondents maintain that the petitioner has failed to demonstrate that application of facts available is warranted under the statute, because (1) all necessary information for transportation distances is on the record; (2) no respondent withheld or failed to provide information requested in a timely manner and in the form required; (3) no respondent impeded the review proceeding; and (4) the Department was able to verify all of the respondent's submitted transportation distances. With regard to the petitioner's allegation that because the Department's verification reports did not state that all distances reported by each respondent were examined even though some errors in reported transportation distances were noted in the reports, the six respondents assert that the Department clearly noted in the verification reports for all respondents that it checked all of the distances reported by the respondents. Moreover, the six respondents state that if the petitioner had compared the distances reported in the Department's verification reports with the distances reported in each respondent's Section D submission, the petitioner would discover that the Department did in fact verify all of the reported distance information. Additionally, the six respondents assert that even if the Department had elected not to examine all of the reported distances, the Department has the discretion not to verify all reported information. Furthermore, the six respondents note, contrary to the petitioner's assertions, that the errors in the reported transportation distances noted in the verification reports were either minor in nature or were to the detriment of the affected respondent. Finally, the six respondents point out that the Department verified the correct distances and thus should use them in the final results.

Doc Position

We agree with the six respondents. At verification, we examined all of the distances reported by each respondent using maps to check each respondent's reported distances (see ''Distances'' section of verification reports for the six respondents). As noted in the verification reports, we found several minor errors. In addition, the respondents informed the Department of some minor clerical errors they found in preparation for verification at the commencement of verification. However, these errors did not affect the overall integrity of each respondent's data. Hence, we find the application of facts available is unwarranted in this case and have used the corrected transportation distance information noted in the verification reports for each respondent in the final results.

Company-Specific Issues

Comment 6: Duties and Responsibilities of GREN's General Manager

The petitioner argues that verification exhibit documentation does not support a finding that GREN's general manager has autonomy from the government in making decisions regarding the selection of management. Therefore, because the respondent did not demonstrate *de facto* absence of government control, the petitioner argues that the Department should use facts available and deny GREN a separate rate.

GREN states that the petitioner's argument is without merit. First, the respondent points out that a specific verification exhibit (*i.e.*, exhibit four referred to in the GREN verification report) explains the selection process for GREN's factory general manager. In addition, the respondent maintains that all responses to the Department's questions and all documents reviewed at verification concerning personnel and management selection were consistent with information provided in GREN's questionnaire responses and fully support a determination that GREN's personnel and management selection decisions are free from government involvement. The respondent contends that the petitioner is merely asserting that the absence of additional documentation renders the findings of the Department's verification report and exhibits insufficient to prove the absence of government control over management regarding the hiring or firing of employees. Because, in its opinion, the petitioner's conclusory allegation is illogical and contradicted by the substantial evidence in the GREN verification reports and exhibits, the respondent maintains that the Department should reject petitioner's argument and conclude that substantial record evidence supports a finding of GREN's independence from government control.

DOC Position

We agree with the respondent. In conducting our verification of this issue at GREN, we examined all documentation such as management appointment notices issued and approved by GREN's board of directors and meeting minutes for the election of the general manager (*see* verification exhibit 4 and exhibit 2 of GREN's April 7, 1998, submission). We discussed with GREN the selection process for the general manager. Based on our examination of statements in GREN's response and documentation provided by GREN at verification, we found no evidence that refuted or contradicted GREN's statements in its response regarding whether its management selected its personnel without government interference. Therefore, we find that the petitioner's claim of *de facto* government control in the case of GREN is unsubstantiated by any evidence on the record.

Comment 7: Relationship Between CNIM and its Supplier of the Subject Merchandise and the PRC Government

The petitioner argues that the Department's verification report did not provide sufficient information on whether CNIM met the separate rates criteria. First, the petitioner claims that the separate rate test should apply to CNIM's supplier of the subject merchandise, Hanting, because Hanting did not provide sufficient evidence that it is unaffiliated with CNIM. The petitioner further adds that there is a reason to suspect that CNIM and Hanting are affiliated parties because CNIM supplied control numbers in its sales response which are identical to the control numbers Hanting provided in its factors of production (''FOP'') response. Second, the petitioner argues that there is no documentary evidence in the verification report that supports a finding that CNIM does not coordinate its selling and pricing activities with other PRC exporters of the subject merchandise or with the China Chamber of Commerce (''CCC''). Moreover, the petitioner adds that the items the Department routinely examines to determine whether a respondent meets the separate rates criteria (*i.e.*, sales records, bank records and accounting ledgers) are not likely to reveal activities of price or selling coordination among PRC entities and the government or the PRC government's role in setting prices. Furthermore, the petitioner argues that the Department did not fully examine this issue at verification because there is no mention in the verification report that documentation such as letters, facsimiles, emails, phone logs, memoranda of phone conversations, and travel and expense records were examined, or that the Department officials visited the CCC. Finally, the petitioner argues that there is no documentary evidence in the verification report that supports a finding that no PRC government entity had a role in setting prices for CNIM. To determine whether CNIM was subject to PRC government control, the petitioner argues that the Department should have examined letters, facsimiles, emails, phone logs, memoranda of phone conversations, and travel and expense records of CNIM.

The respondent states that the fact that CNIM and Hanting reported the same control numbers simply reflects good communication between the two companies in preparing their antidumping response, which is consistent with the Department's questionnaire requirements, and has nothing to do with the affiliation issue or the separate rates issue. With regard to the sales documentation which the Department examined at verification, the respondent states that the Department's thorough examination of such documentation demonstrated that CNIM personnel were, in fact, solely involved in the sales and pricing activities, and that the sales records did not identify any other PRC exporter or the CCC as a party to CNIM's sales transactions. Finally, the respondent maintains that all documentation reviewed by the Department at verification represents substantial evidence which supports a finding that there is no coordination of selling or pricing activities between CNIM and other PRC exporters or the CCC.

DOC Position

We agree with the respondent. The petitioner's claim that CNIM and Hanting are affiliated parties is without merit. At verification, we examined CNIM's long-term and short-term investments in its affiliates by examining investment entries in CNIM's short-term and long-term investment subledgers (*see* verification exhibit 19 of the Department's verification report for CNIM). We also tied these subledgers to CNIM's financial statements. We also examined at verification Hanting's short-term and long-term investments. As a result of our examination, we found no evidence that CNIM made investments in Hanting (or *vice versa*) or that CNIM is otherwise affiliated with Hanting. The petitioner erroneously concludes that, because CNIM supplied the same control numbers as Hanting supplied in its FOP response, CNIM and Hanting must be affiliated parties. In issuing the antidumping questionnaire, the Department instructed CNIM to furnish, by control number, for each of its sales to the U.S. market, the factors used by its supplier to produce the merchandise sold by CNIM. This reporting requirement applies to both affiliated and unaffiliated suppliers of the subject merchandise and is separate from the affiliation issue.

We also disagree with the petitioner's claim that CNIM coordinated its selling and pricing activities with other PRC exporters of the subject merchandise or with the CCC, and that a PRC government entity had a role in setting prices for CNIM. At verification, we extensively examined CNIM's accounting records and sales documentation and found no evidence to support these claims. Although we did not examine the additional types of documentation suggested by the petitioner for the first time in its case brief (*i.e.*, letters, facsimiles, emails, phone logs, memoranda of phone conversations, and travel and expense records), we did examine the type of documentary evidence (including sales documentation and records, bank records and accounting ledgers) that we normally rely on in NME cases. The Department considers such evidence to be sufficient to establish whether there is a *de facto* absence of government control in selling and pricing activities of the respondent or whether the respondent is coordinating with other PRC exporters in selling the subject merchandise. In this case, we find that the substantial evidence on this record supports a finding that CNIM did not coordinate its selling and pricing activities with other PRC exporters of the subject merchandise or with the CCC, and that no PRC government entity had a role in setting prices for CNIM.

Final Results of the Review

As a result of our comparison of EP and NV, we determine that the following weighted-average margins exist for the period April 1, 1997, through September 30, 1997:

Manufacturer/producer/exporter	Margin (percent)
China National Machinery Import & Export Company (CNIM)	0.00
Laizhou Auto Brake Equipments Factory (LABEF)	0.00
Longkou Haimeng Machinery Co., Ltd. (Haimeng)	0.00
Qingdao Gren Co. (GREN)	0.00
Yantai Winhere Auto-Part Manufacturing Co., Ltd. (Winhere)	0.00
Zibo Luzhou Automobile Parts Co., Ltd. (ZLAP)	0.00

We will instruct the U.S. Customs Service not to assess antidumping duties on entries of the subject merchandise from the above-referenced PRC exporters made during the POR.

Furthermore, the following deposit rates shall be required for merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for CNIM, LABEF, Haimeng, GREN, Winhere, and ZLAP will be the rates indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in the LTFV investigation will continue to be the rate assigned in that investigation; (3) the cash deposit rate for all other PRC exporters will continue to be 43.32 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final 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 the 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 notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This new shipper administrative review and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 351.214(d).

Dated: February 23, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–5014 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On September 23, 1998, the Department of Commerce (''the Department'') published the notice of initiation and preliminary results of its changed circumstances administrative review concerning whether Kinn Salmon A/S (''Kinn'') is the successor firm to Skaarfish Group A/S (''Skaarfish''). We have now completed that review. We have determined that Kinn is the successor firm to Skaarfish.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4195.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreement Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Background

In a letter dated March 2, 1998, Kinn advised the Department that on July 1, 1997, the former Skaarfish reorganized to form two firms, Skaarfish Pelagisk AS and Kinn Salmon. Kinn requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Act to determine whether Kinn should properly be considered the successor firm to Skaarfish. Kinn stated that the salmon activities of Skaarfish including processing, marketing and exporting were transferred to Kinn Salmon AS. Skaarfish Pelagisk AS oversees the processing, marketing and exporting activities of all other types of fish. Kinn stated that its operations are a direct continuation of the salmon related activities performed by Skaarfish. While the board of directors has changed, the officers and management of Kinn are virtually identical to the officers and management of Skaarfish. Kinn stated that the address, telephone numbers and telefax numbers are the same as those of Skaarfish. Furthermore, it operates the same facilities in Floro, Norway that were operated by Skaarfish for the processing of salmon and conducts business operations at the same executive offices used by Skaarfish. It provided documentation showing that the customer list for Kinn and the supplier list to Kinn is the same as the customer and supplier lists for Skaarfish. Kinn submitted a copy of The Certificates of Registration of Skaarfish, Skaarfish Pelagisk AS, and Kinn Salmon AS that it filed with the Register of Business Enterprises in Norway.

On September 23, 1998, the Department published in the **Federal Register** (63 FR 50880) the notice of initiation and preliminary results of its changed circumstances antidumping duty administrative review of fresh and chilled Atlantic salmon from Norway. We have now completed this changed circumstances review in accordance with section 751(b) of the Act.

Scope of the Review

The merchandise covered by this review is fresh and chilled Atlantic salmon (''salmon''). It encompasses the species of Atlantic salmon (''Salmo salar'') marketed as specified herein; the subject merchandise excludes all other species of salmon: Danube salmon; Chinook (also called ''king'' or ''quinnat''); Coho (''silver''); Sockeye (''redfish'' or ''blueback''); Humpback (''pink''); and Chum (''dog''). Atlantic salmon is whole or nearly whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Fresh and chilled Atlantic salmon is currently provided for under Harmonized Tariff Schedule (HTS) subheading 0302.12.00.02.09. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Successorship

In considering questions involving successorship, the Department examines several factors including, but not

limited to, changes in (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is essentially the same as its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review,* 59 FR 6944 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the successor company the same as the predecessor for antidumping purposes, e.g., assign the same cash deposit rate, apply any relevant revocation.

We have examined the information provided by Kinn in its March 2, 1998, letter and determined that Kinn is the successor-in-interest to Skaarfish. The management and organizational structure of the former Skaarfish have remained intact under Kinn, and there have been no changes in the production facilities, supplier relationships, or customer base. Therefore, we determine that Kinn has maintained the same management, production facilities, supplier relationships, and customer bases as did Skaarfish.

Comments

Although we gave interested parties an opportunity to comment on the preliminary results, none were submitted.

Final Results of Changed Circumstances Review

We determine that Kinn is the successor-in-interest to Skaarfish for antidumping duty cash deposit purposes. Kinn, therefore, will be assigned the Skaarfish antidumping cash deposit rate of 2.30 percent. This deposit requirement will apply to all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 1997, the date on which the corporate name change legally took effect. This deposit rate shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This changed circumstances review and notice are in accordance with section 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 CFR 351.216.

Dated: February 23, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–5015 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Chicago, Argonne National Laboratory; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–061. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: Ion Source. Manufacturer: Atomika Instruments, Germany. Intended Use: See notice at 63 FR 69264, December 16, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides an ion current >1μA in a spot size <60 microns with a dynamic range $>10^5$ for depth profiling near surface concentrations below one ppt. The Los Alamos National Laboratory advises that: (1) This capability is pertinent to the applicant's intended purpose; and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–5019 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Davis; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–062. Applicant: University of California, Davis, CA 94550. Instrument: Titanium Sapphire Oscillator. Manufacturer: Femtolasers Produktions, Germany. Intended Use: See notice at 63 FR 69264, December 16, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides ultrashort (12 femtosecond), ultrahigh intensity laser pulses using patented mirror dispersion control technology for study of laser-electron interactions at high intensities. Brookhaven National Laboratory advised February 10, 1999 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–5020 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–064. Applicant: University of Colorado, Denver, CO 80217. Instrument: Ammonia Flux Analyzer, Model AMANDA–100. Manufacturer: ECN Fuels, The Netherlands. Intended Use: See notice at 63 FR 71268, December 24, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) 2-minute response time, (2) a detection limit of 10.0 ng of NH_3/m^3 and (3) portable deployment. A domestic manufacturer of similar equipment advised February 8, 1999 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–5021 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–001. *Applicant:* The Regents of the University of Michigan, MS3204 Medical Sciences I, 1301 Catherine, Ann Arbor, MI 48109–0602. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used to train medical students and house officers to evaluate tissue specimens in the practice of anatomic pathology for patients. *Application accepted by Commissioner of Customs:* February 11, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–5022 Filed 2–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022299B]

Report to Congress; Impacts of Pinnipeds on Salmonids and West Coast Ecosystems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a Report to Congress on the impacts of California sea lions and Pacific harbor seals (pinnipeds) on salmonids and West Coast ecosystems. The report provides recommendations for addressing issues and problems with expanding pinniped populations on the West Coast. NMFS prepared this report in accordance with section 120(f) of the Marine Mammal Protection Act (MMPA).

ADDRESSES: Copies of the Report to Congress are available from NMFS, Northwest Regional Office, 7600 Sand Point Way, NE., Seattle, WA 98115. The report also can be obtained on the Internet at http://www.nwr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Joe Scordino (206) 526–6143, Irma Lagomarsino (562) 980–4016, or Donna Wieting (301) 713–2322.

SUPPLEMENTARY INFORMATION: The 1994 amendments to the MMPA directed the Secretary of Commerce (Secretary) to conduct a 1-year scientific investigation to determine whether California sea lions and Pacific harbor seals were having (1) a significant negative impact on the recovery of salmonid fishery stocks that have been listed as endangered or threatened species under the Endangered Species Act (ESA) or that the Secretary finds are approaching endangered or threatened status or (2) broader impacts on the coastal ecosystems of Washington, Oregon, and California. Because NMFS did not have available resources and sufficient time to conduct rigorous field investigations on the issues identified by Congress within the specified 1-year timeframe, it established a Working Group in 1995 that focused the scientific investigation on a review of information from past field studies. The final Working Group report was published in March 1997 as a part of the NOAA technical memorandum series (NOAA Technical Memorandum NMFS-NWFSC–28) entitled, ''Investigation of Scientific Information on the Impacts of California Sea Lions and Pacific Harbor Seals on Salmonids and on the Coastal Ecosystems of Washington, Oregon, and California.'' Copies of this report are available on the Internet at http://www.nwfsc.noaa.gov/pubs/tm/tm28/tm28.htm.

After completion of the scientific investigation, in accordance with the MMPA, NMFS, on behalf of the Secretary, entered into discussions with the Pacific States Marine Fisheries Commission (PSMFC), on behalf of Washington, Oregon, and California, to address issues or problems identified as a result of the scientific investigation and to develop recommendations to address such issues or problems. In February 1997, the discussions were completed, and NMFS prepared a draft report to Congress to recommend measures to address issues identified in the discussions with PSMFC and representatives of the coastal states. On March 28, 1997 (62 FR 14889), NMFS published notification in the **Federal Register** on the availability of the draft report to Congress for a 90-day public review and comment period. Over 300 letters and 3000 postcards commenting on the draft report were received.

After consideration of public comments, NMFS completed the Report to Congress. A summary of those comments with NMFS responses is

attached as an Appendix to the Report to Congress.

The two issues on pinniped impacts on salmonids and west coast ecosystems described in the Report are as follows:

1. California sea lion and Pacific harbor seal populations on the West Coast are increasing while many salmonid populations are decreasing. Salmonid populations that are depressed and declining, especially those that are listed or proposed to be listed under the ESA, can be negatively impacted by expanding pinniped populations and attendant predation.

2. Increasing California sea lion and Pacific harbor seal populations and their expanding distribution are impacting negatively commercial fisheries, affecting recreational fishing and private property, and posing threats to public safety.

The Report to Congress has four recommendations:

1. *Implement site-specific management for California sea lions and Pacific harbor seals.* Congress should consider a new framework that would allow state and Federal resource management agencies to immediately address conflicts involving California sea lions and Pacific harbor seals. This framework should provide a streamlined approach for Federal and state resource management agencies to take necessary and appropriate action with pinnipeds, including lethal taking when necessary, that are involved in resource conflicts. Any lethal takings would have to be within the Potential Biological Removal levels established by NMFS for all human causes of mortality.

The three components of the framework are as follows: (1) In situations where California sea lions or Pacific harbor seals are preying on salmonids that are listed as or proposed to be, candidates for listing under the ESA, immediate use of lethal removal by state or Federal resource agency officials would be authorized; (2) in situations where California sea lions or Pacific harbor seals are preying on salmonid populations of concern or are impeding passage of these populations during migration as adults or smolts, lethal takes by state or federal resource agency officials would be authorized if (a) non-lethal deterrence methods are underway and are not fully effective, or (b) non-lethal methods are not feasible in the particular situation or have proven ineffective in the past; and (c) in situations where California sea lions or Pacific harbor seals conflict with human activities, such as at fishery sites and marinas, lethal removal by state or Federal resource agency officials would be authorized after non-lethal deterrence has been ineffective.

2. *Develop safe, effective non-lethal deterrents.* In order to provide an array of options broader than lethal removal to resolve West Coast pinniped problems, there is a pressing need for research on the development and evaluation of deterrent devices and further exploration of other non-lethal removal measures. Potential options need to be evaluated in a concerted, adequately funded effort to address this issue. Research and development of pinniped deterrence methods should be a research priority for addressing expanding pinniped populations on the West Coast.

3. *Selectively reinstate authority for the intentional lethal taking of California sea lions and Pacific harbor seals by commercial fishers to protect gear and catch.* Prior to the 1994 Amendments to the MMPA, commercial fishers were allowed to kill certain pinnipeds, as a last resort, in order to protect their gear or catch. Although the 1992 NMFS legislative proposal contained provisions to continue such authority, it was not included in the 1994 Amendments to the MMPA. Congress should reconsider providing a limited authorization, based on demonstrated need, to certain commercial fishermen at specified sites to use lethal means, as a last resort, to protect their gear and catch from depredation by California sea lions and Pacific harbor seals until such time that effective non-lethal methods are developed for their specific situation.

4. *Information needs.* An array of additional information is needed to better evaluate and monitor California sea lion and Pacific harbor seal impacts on salmonids and other components of the West Coast ecosystems. Details of such studies are described in the Report to Congress.

The Report to Congress was submitted on February 10, 1999 to the House of Representatives Committee on Resources and to the Senate Committee on Commerce, Science, and Transportation in accordance with the MMPA. Congress will consider the report in the reauthorization of the MMPA. Copies of the Report to Congress are available to the public on request (see **ADDRESSES**).

Authority: 16 U.S.C. 1389(f).

Dated: February 22, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–5007 Filed 02–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Defense Finance and Accounting Service, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 30, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Denver Center, Defense Finance and Accounting Service, DFAS–DE/FYSA, ATTN: Vicki Holifield, 6760 East Irvington Place, Denver, CO 80279–3000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Vicki Holifield, 303–676–4743.

Title, Associated Form, and OMB Number: Request for Information Regarding Deceased Debtor.

Needs and Uses: This form is used to obtain information on deceased debtors from probate courts. Probate courts review their records to see if an estate was established. They provide the name and address of the executor or lawyer handling the estate. From the information obtained, we submit a claim against the estate for the amount due the United States.

Affected Public: Clerks of Probate Courts.

Annual Burden Hours: 833 hours.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: When we are notified a debtor is deceased.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Defense Finance and Accounting Service maintains updated debt accounts and initiates debt collection action for separated military members, out-of-service civilian employees, and other individuals not on an active federal government payroll system. When notice is received that an individual debtor is deceased, an effort is made to ascertain whether the decedent left an estate by contracting clerks of probate courts. If it's determined that an estate was established, attempts are made to collect the debt from the estate. If no estate appears to have been established, the debt is written off as uncollectible.

Dated: February 24, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–4941 Filed 2–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 229, Taxes, and Related Clauses at 252.229; OMB Number 0704–0390.

Type of Request: Extension.

Number of Respondents: 17.

Responses Per Respondent: 1.

Annual Responses: 17.

Average Burden Per Response: 4 hours.

Annual Burden Hours: 68.

Needs and Uses: The information collection is used by DoD to determine if DoD contractors in the United Kingdom have attempted to obtain relief from customs duty on vehicle fuels in accordance with contract requirements. The clause at DFARS 252.229–7010, Relief from Customs Duty on Fuel (United Kingdom), is prescribed at DFAR 229–402–70(j), for use in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles. The clause requires the contractor to submit to the contracting officer evidence that an attempt to obtain relief from customs duty on fuels and lubricants has been initiated.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 24, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–4942 Filed 2–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 16 March 1999 (900am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 24, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–4940 Filed 2–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a four-hour public meeting to discuss its activities since November; to solicit recommendations from veterans service organizations; to receive a presentation on government-sponsored research dealing with neurological damage; and to receive first-hand accounts from Gulf War veterans about potential environmental exposures such as pesticides and tent heaters encountered during Operations Desert Shield and Desert Storm.

DATES: April 22, 1999.

ADDRESSES: Beuna Vista Theater, Buena Vista Street Building, University of Texas at San Antonio, 501 West Durango Boulevard, San Antonio, TX 78207.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Roger Kaplan, Deputy Executive Director, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9470, fax (703) 696–4062, or via Email at Gulfsyn@osd.pentagon.mil. Requests for oral comments must be sent in writing to Mr. Kaplan and be received no later than noon Eastern Time on Thursday April 15, 1999. Written comments must be received no later than Friday April 9, 1999. Copies of the draft meeting agenda can be obtained by contacting Ms. Sandra Simpson at (703) 696–9464 or at the above fax number or above Email.

SUPPLEMENTARY INFORMATION: The hearing is scheduled for 6–10 p.m. CDT. Seating at the Buena Vista Theater is limited, and spaces will be reserved only for scheduled speakers. The

remaining seating will be available on a first-come, first-served basis beginning at 5:00 p.m. CDT. The special Oversight Board expects that public statements presented at its meeting will deal only with first-hand experiences with potential environmental exposures such as pesticides and tent heaters encountered during Operations Desert Shield and Desert Storm. Board interest is focused on Department of Defense investigations of Gulf War chemical and biological incidents. Clinical and health benefits issues remain outside the scope of the Board's responsibilities under Executive Order No. 13075. In general, each individual making an oral presentation will be limited to a total time of five minutes. Written comments received after April 10 will be mailed to Board members after the adjournment of the San Antonio meeting.

Dated: February 24, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–4939 Filed 2–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on December 18, 1997, an arbitration panel rendered a decision in the matter of *Melvin Barrineau, et al.* v. *South Carolina Commission for the Blind (Docket No. R–S/96–7).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioners, Melvin Barrineau, et al.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (the Act) (20 U.S.C. 107d-2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the distribution of vending machine income generated by non-blind operated vending machines to licensed blind vendors who operate separate facilities at the Department of Energy's (DOE) Savannah River site in South Carolina. Each of these separate facilities is a route comprised solely of vending machines located at different buildings.

Pursuant to the Act in 20 U.S.C. 107d-3, DOE annually distributed 50 percent of the vending machine income from the non-blind operated vending machines to the South Carolina Commission for the Blind, the State licensing agency (SLA). The SLA used the income, in accordance with the Act, to benefit all licensed blind vendors in the South Carolina Randolph-Sheppard Vending Facility Program. None of the income was distributed to any of the licensed vendors at the DOE Savannah River site. The SLA alleged that, because of its size (approximately 320 square miles) and configuration, the DOE Savannah River site should be treated as more than one Federal property for the purposes of distributing vending machine income. On the other hand, the complainants' position was that the Savannah River site should be treated as a single Federal property. Therefore, the complainants alleged that the SLA was in violation of the Act by not distributing the income from vending machines to the blind vendors on the Federal property.

The complainants requested and received a full evidentiary hearing, which was held on January 22, 1996. The hearing officer issued a decision on March 5, 1996, that the dispute depended upon an interpretation of Federal statutory or regulatory requirements or agency policy, so the hearing officer had no jurisdiction over the dispute.

Subsequently, the complainants requested that an arbitration panel be convened to hear the dispute. The panel was convened on August 26 and 27, 1997.

Arbitration Panel Decision

The following issues were before the arbitration panel: (1) Should the Savannah River site be considered a single ''Federal property'' as defined by 20 U.S.C. 107e(3) for the purpose of distribution of vending machine income under 20 U.S.C. 107d-3(a)? (2) Should the South Carolina Commission for the Blind be allowed to interpret clear and unambiguous statutory and regulatory language to its benefit, and should the Rehabilitation Services Administration (RSA) be allowed to interpret clear and unambiguous statutory and regulatory language differently from case to case? (3) Does vending machine income from non-Randolph-Sheppard vendors on Federal property accrue to blind vendors operating on that property regardless of the property's size or the apparent degree of competition?

The arbitration panel referred to the legislative history of the 1974 Amendments to the Act in making its decision. The panel found that Congress provided specific guidance to the Commissioner of RSA in the determination, on a case-by-case basis, of what ceiling should be imposed on income to blind vendors from vending machines not a part of the vendor's facility. According to the legislative history, the following factors should be taken into account: Whether an additional blind vendor might be installed on the property. How much vending machine income is involved. The current income of the licensee, including the adequacy of that income to meet the vendor's needs. The age and length of service of the blind vendor. The panel applied each of these factors to the facts in this case.

The panel further found, in examining the Act, regulations, and preamble to the regulations, that the term ''Federal property'' was used interchangeably with the words ''building, location, and premises.'' See 20 U.S.C. 107a(d) and 34 CFR 395.31. Therefore, the majority of the panel reasoned that the interpretation of the term ''Federal property'' should not be so convoluted as to result in the provision of a windfall of other unassigned vending machine income being distributed to the blind vendors operating vending routes at the Savannah River site. The majority of the panel reasoned further that for the purposes of the Act the Savannah River site is no more a single Federal property than the District of Columbia.

In addition, the panel took into account the decision of the Commissioner of RSA that the SLA could treat the Savannah River site as more than one Federal property. The panel stated that this RSA policy should be given deference as the Commissioner is charged by Congress with the direct national administration, policy, and management responsibility for the Act.

For the foregoing reasons, the majority of the arbitration panel concluded that—(1) neither the Act, the regulations promulgated under it, nor any decision by an arbitration panel or court compels the Savannah River site to be treated as a single Federal property for the purposes of the Randolph-Sheppard Act; (2) the blind vendor routes at the Savannah River site constitute separate and distinct Federal properties; (3) to find otherwise would constitute a distortion of the provisions and underlying purpose of the Randolph-Sheppard Act; and (4) to allocate unassigned vending income to the complainants in this case would be an unanticipated windfall to them.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: February 22, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–4888 Filed 2–26–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–205]

Application To Export Electric Energy; A. Gonzalez, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: A. Gonzalez, Inc. has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 31, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On February 18, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from A. Gonzalez Inc. (AGI) to transmit electric energy from the United States to Mexico. AGI is a power marketer and does not own or control any facilities for the generation or transmission of electricity, nor does it have a franchised service area. AGI proposes to transmit to Mexico electric energy purchased from electric utilities and other suppliers within the U.S.

In FE Docket EA–205, AGI proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Commission Federal de Electricidad, the national electric utility of Mexico.

The construction of each of the international transmission facilities to be utilized by AGI, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the AGI application to export electric energy to Mexico should be clearly marked with Docket EA–205. Additional copies are to be filed directly with Antonio Gonzalez, 2345 Marconi Court, Suite A, Otay Mesa, California 92173.

A final decision will be made on this application after the environment impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on February 23, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–4990 Filed 2–26–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP–152–000]

Canadian-Montana Pipe Line Corporation; Notice of Application for Section 3 Authorization and Request for a Presidential Permit

February 23, 1999.

Take notice that on January 12, 1999, Canadian-Montana Pipe Line Corporation (CMPL), 40 East Broadway, Butte, Montana 59701, filed an application pursuant to Section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations for a Presidential Permit and authorization to site, construct, and operate facilities for the importation of natural gas from Canada. CMPL's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Specifically, CMPL is seeking NGA Section 3 authority and a Presidential

Permit to site, construct, and operate 30 feet of 8-inch pipeline having a capacity of 10 MMcfd at the United States-Canada International Boundary near the village of Monchy, Saskatchewan, Canada. CMPL states that the border crossing facilities will be constructed as an extension of its proposed Canadian facilities and will connect to a new 4-mile, 8-inch gathering pipeline to be constructed in Montana by North American Resource Company (NARCo). CMPL is a wholly owned subsidiary of Montana Power Company. NARCo is a wholly owned subsidiary of Entech, Inc., which is also a wholly owned subsidiary of Montana Power Company.

CMPL states that the purpose of the proposed facilities is for the transportation of low pressure, hydrocarbon and water wet natural gas from wells in the Monchy area to a connection with the proposed NARCo facilities which will then connect to KN Gas Gathering Inc.'s existing gas gathering system in the Bowdoin gas field in Montana. It is further stated that the proposed facilities are the only economically viable means to allow gas to be produced from certain Canadian gas wells which are currently shut-in, and will also allow undeveloped Canadian gas reserves in the area to be developed.

Any person desiring to be heard or making any protest with reference to said application should on or before March 16, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petititon for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

However, a person does not have to intervene in order to have comments on any aspect of the proposal considered by the Commission. Instead, a person may submit two copies of such comments to the Secretary of the Commission. Commenters who are concerned about environmental or pipeline routing issues will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 3, and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CMPL to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–4879 Filed 2–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1854–000]

Central Vermont Public Service Corporation; Notice of Filing

February 22, 1999.

Take notice that on February 12, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Morgan Stanley Capital Group Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on February 12, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 4, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–4878 Filed 2–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–213–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

February 23, 1999.

Take notice that on February 16, 1999, Reliant Energy Gas Transmission Company (Reliant), formerly NorAm Gas Transmission Company,[1] 1111

[1] Effective February 2, 1999, as part of a corporate name change, NorAm Gas Transmission Company changed its name to Reliant Energy Gas Transmission Company.

Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP99–213–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct, and operate certain facilities in Oklahoma. Reliant makes such request under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission. The application may be viewed on the web at www.ferc.us/online/rims.htm (call (202) 208–2222 for assistance).

Reliant proposes to construct and operate a 2-inch delivery tap and first-cut regulator to serve Reliant Energy Arkla (Arkla), a division of Reliant Energy, Incorporated. It is stated that Arkla will construct and operate a domestic meter setting, and that Reliant will own and operate the delivery tap and first-cut regulator. The tap and regulator is proposed to be installed on Reliant's Line 10 at pipeline station 637+24 in Stephens County, Oklahoma, at an estimated cost of $1,500. Reliant states that all construction will occur on the existing right-of-way. It is stated that Arkla has agreed to reimburse Reliant's construction cost.

The estimated volumes to be delivered to this tap are 85 Dt annually and 0.25 Dt on a peak day. It is averred that Reliant will transport gas to Arkla and provide service under its tariff, and that the volumes proposed for delivery are within Arkla's certificated entitlements. Reliant further states that its tariff does not prohibit the addition of new delivery points, and that Reliant has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–4880 Filed 2–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–219–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

February 23, 1999.

Take notice that on February 17, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP99–219–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a delivery point for Monroe Power Company (MPC), a new gas transportation customer and provider of electricity and energy services in the southeast United States, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Transco states that the delivery point will consist of a 10-inch valve tap assembly, approximately one mile of 10-inch pipeline lateral from Transco's mainline tap to MPC's facility location, a meter station with two 10-inch orifice meter tubes, and other appurtenant facilities. Transco states the proposed delivery point will be installed at or near milepost 1084.96 on its mainline near Station No. 125 in Walton County, Georgia. Transco states that MPC will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from Transco at such point and move the gas to a new MPC peaking power facility.

Transco states the new delivery point will be used by MPC to receive up to 97,000 dekatherms of gas per day from Transco on a capacity release, secondary firm or interruptible basis. Transco states the gas delivered through the new delivery point will be used by MPC as fuel for its peaking power facility. Transco states that MPC is not currently a transportation customer of Transco, and that upon completion of the delivery point Transco will commence transportation service to MPC or its suppliers pursuant to Transco's Rate Schedules FT, FT–R, or IT and Part 284(G) of the Commission's regulations. Transco states the addition of the delivery point will have no significant impact on its peak day or annual deliveries, and is not prohibited by its FERC Gas Tariff.

Transco estimates the total costs of its proposed facilities to be approximately $1,470,800.00, and states that MPC will reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–4881 Filed 2–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–38–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company; Southern Energy Potrero, L.L.C.; Southern Energy Delta, L.L.C.

[Docket No. EC99–38–000]

On February 18, 1999, Pacific Gas and Electric Company (PG&E), Southern Energy Potrero, L.L.C. and Southern Energy Delta, L.L.C. (collectively the Southern Parties) tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission)

a Joint Application for Authorization to Transfer Jurisdictional Assets and Request for Expedited Approval Pursuant to Section 203 of the Federal Power Act (Joint 203 Application) in conjunction with a series of transactions through which PG&E will divest certain generating assets, and other related FERC-jurisdictional facilities, by sale to the Southern Parties.

Comment date: March 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. NFR Power, Inc.; National Fuel Resources, Inc.

[Docket Nos. ER96–1122–010 and ER96–1122–011; ER95–1374–010, ER95–1374–011, ER95–1374–012, and ER95–1374–013]

Take notice that on February 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Avista Energy, Inc.

[Docket No. ER96–2408–010]

Take notice that on February 18, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Millennium Energy Corporation

[Docket No. ER98–174–004]

Take notice that on February 19, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Horizon Energy Company

[Docket No. ER98–380–007]

Take notice that on February 17, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. AES Alamitos, L.L.C.

[Docket No. ER99–1861–000]

Take notice that on February 17, 1999, the above-referenced public utility filed their quarterly transaction reports for the quarter ending September 30, 1998.

Comment date: March 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER99–1863–000]

Take notice that on February 18, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for PP&L EnergyPlus Co., (the Transmission Customer). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is February 4, 1999.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy System

[Docket No. ER99–1864–000]

Take notice that on February 18, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Firm Point-to-Point Transmission Service for PP&L EnergyPlus Co., (the Transmission Customer). Services are being provided under the FirstEnergy System Open Access Transmission Tariff tendered for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under the Service Agreement is February 4, 1999, for the above mentioned Service Agreement in this filing.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER99–1865–000]

Take notice that on February 18, 1999, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with British Columbia Power Exchange Corporation for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet Nos. 148 and 148A and Original Sheet No. 148B (Attachment E) to the tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit an effective date of February 19, 1999, for Attachment E, and allow the Service Agreement to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ameren Services Company

[Docket No. ER99–1866–000]

Take notice that on February 18, 1999, Ameren Services Company (Ameren), tendered for filing a Service Agreement for Market Based Rate Power Sales between Ameren and Duke Power, a division of Duke Energy Corporation (DP). Ameren asserts that the purpose of the Agreement is to permit Ameren to make sales of capacity and energy at market based rates to DP pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Union Electric Company

[Docket No. ER99–1867–000]

Take notice that on February 18, 1999, Union Electric Company (UE), tendered for filing the Tenth Amendment date December 23, 1999, to the Interchange Agreement dated June 28, 1978, between Associated Electric Cooperative, Incorporated and UE. UE asserts that the Amendment primarily provides for the addition of two interconnection points and amends a third interconnection point.

UE requests that the filing be permitted to be effective December 23, 1998.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER99–1868–000]

Take notice that February 18, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Second Restated Power Sales Agreement with the City of Mesa,

Arizona under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–1869–000]

Take notice that on February 18, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and TransAlta Energy Marketing (U.S.) Inc. (Customer), for Short-Term Market Based Rate Sales. Under the Service Agreement, Virginia Power will provide services to the Customer under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of February 18, 1999.

Copies of the filing were served upon TransAlta Energy Marketing (U.S.) Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER99–1870–000]

Take notice that on February 18, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Generation Interconnection Agreement between PacifiCorp and the City of Klamath Falls, Oregon (Klamath Falls) dated February 17, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER99–1871–000]

Take notice that on February 18, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of January 1, 2001 for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER99–1872–000]

Take notice that on February 18, 1999, PECO Energy Company (PECO), tendered for filing an updated market analysis to demonstrate that it does not have market power and amended certain sheets under its FERC Electric Tariff Original Volume No. 1 (the Tariff). The amendments clarify certain provisions and amend others.

PECO requests an effective date of April 12, 1999.

PECO states that copies of this filing have been served on the Pennsylvania Public Utility Commission and on all customers who have executed service agreements under PECO's Electric Tariff Volume I.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–1873–000]

Take notice that on February 18, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Commonwealth Edison Company (ComEd); Cinergy Capital and Trading, Inc. (CCT); Central Minnesota Municipal Power Agency/ Utilities Plus (CMMPA); and Electric Clearinghouse, Inc., (ECI). The Transmission Service Agreement allows ComEd, CCT, CMMPA, and ECI to receive transmission service under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on ComEd, CCT, CMMPA, and ECI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: March 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–4952 Filed 2–26–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6237–2]

Method And Format For Submitting Risk Management Plans (RMPs) Under Section 112(r) of the 1990 Clean Air Act Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This document provides information about the method and format for submitting risk management plans (RMPs) under EPA's regulations for preventing chemical accidents, 40 CFR part 68. RMPs must be submitted by the owner or operator of any facility that has a process containing more than a threshold quantity of a chemical listed at 40 CFR 68.130. The deadline for submitting RMPs is June 21, 1999, for any facility with a process containing more than a threshold quantity of a listed chemical by that date. EPA is issuing two documents, the ''RMP*Submit User's Manual'' and the ''RMP ASCII File Format,'' for use in submitting RMPs.

ADDRESSES: The RMP*Submit User's Manual and the RMP ASCII File Format are available on the Internet at: http://www.epa.gov/swercepp/rmp-dev.html. To obtain paper copies of these documents, please contact the National Center for Environmental Publications

and Information (NCEPI) at 1–800–490–9198. The EPA publication number for the RMP*Submit User's Manual is EPA 550–B99–001. The RMP paper form is Appendix A of the User's Manual. The User's Manual will automatically be sent out with all RMP*Submit requests from NCEPI. The EPA Publication number for the RMP ASCII File Format is EPA 550–B99–002.

Docket. These documents are also available in Docket A–98–08, Category VI and are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays), at Room M1500, U.S. Environmental Protection Agency (6102), 401 M St., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For technical information on the RMP*Submit User's Manual, contact Karen Shanahan at (202) 260–2711. For technical information on the RMP ASCII File Format, contact Lisa Jenkins at (202) 260–7951. The Emergency Planning and Community Right-to-Know Information Hotline (Hotline) is available to answer questions about the Risk Management Program at 800–424–9346, or (703) 412–9877 from the local Washington, DC area.

SUPPLEMENTARY INFORMATION: EPA's rule requiring submission of RMPs (61 FR 31668, June 20, 1996) provides that the Agency will provide information on the ''method and format'' for submission prior to June 21, 1999 (40 CFR 68.150(a)). The purpose of this notice is to provide that information.

The RMP*Submit User's Manual describes the ''method'' for RMP submissions to EPA. In brief, regulated sources should submit their RMP electronically on diskette to the EPA Reporting Center if they are able to do so. Those who are unable to submit on diskette may use the RMP paper form (provided in Appendix A of the User's Manual). If the paper form is used, an Electronic Waiver Form (Appendix B of the User's Manual) should also be completed.

The RMP ASCII File Format provides the ''format'' in which RMPs should be submitted to EPA. RMP*Submit™ (a free software program for submission) and the RMP paper form (for use with the electronic waiver form) are already in this format. If you are planning to use RMP*Submit or the RMP paper form, you do not need the RMP ASCII File Format. The purpose of the RMP ASCII File Format is to assist commercial software vendors who are creating RMP software products, so that their software will put RMPs into the proper format.

EPA recently promulgated a rule that made several changes to RMP data elements (63 FR 964, Jan. 6, 1999). The documents described in this notice include those changes to the RMP regulations. EPA's information collection request for the recent rule and the RMP submission documents was approved by the Office of Management and Budget (OMB) on February 22, 1999. The information collection requirements covered by the request were assigned OMB control number 2050–0144. RMPs may now be submitted to EPA.

Dated: February 24, 1999.

David Speights,

Acting Director, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response.

[FR Doc. 99–4965 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6305–5]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice, the Government may grant exclusive or partially exclusive licenses on any of these inventions.

Copies of the listed patent applications and 37 CFR part 404 can be obtained from Alan Ehrlich, Acting Patent Counsel, at the address indicated below. Requests for copies of the patent applications must include the patent application serial number listed in this notice. Requesters will be asked to sign a Confidentiality Agreement before the application is mailed.

Any party interested in obtaining a license must apply to EPA, including providing the information set forth in 37 CFR 404.8, and including the license applicant's plan for developing or marketing the invention.

Prior to granting an exclusive or partially exclusive license on any of the inventions listed, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific invention and the prospective licensee.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Acting Patent Counsel, Office of General Counsel (2377), Environmental Protection Agency, Washington, DC 20460, telephone (202) 260–7510.

SUPPLEMENTARY INFORMATION:

Patent Applications

U.S. Patent Application Serial No. 09/076,204: Membrane-Based Sorbent for Heavy Metal Sequestration; filed May 12, 1998. The first application for this invention was filed October 31, 1996.

U.S. Patent Application Serial No. 09/123,492: Method for Evaluating and Affecting Male Fertility; filed July 28, 1998. The first application for this invention was filed January 29, 1996.

U.S. Patent Application Serial No. 09/212,375: Novel Pervaporation Membrane for Separation and Recovery of Violatile Organic Compounds for Wastewater; filed December 16, 1998.

U.S. Patent Application Serial No. 09/226,920: Real-Time On-Road Vehicle Exhaust Gas Modular Flowmeter and Emissions Reporting System; filed January 5, 1999. A provisional patent application for this invention was filed January 5, 1998.

Dated: February 17, 1999.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 99–4969 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6305–4]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patent listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent, to ARCADIS Geraghty & Miller, Inc., Mountain View, California. The patent is:

U.S. Patent No. 5,221,230, entitled ''Paint Spraying Booth with Split-flow Ventilation,'' issued June 22, 1993.

The invention was announced as being available for licensing in the April

26, 1995 issue of the **Federal Register** (60 FR 20490). Although the patent was issued in the name of the inventors, it has been assigned by them to their employers. The Government of the United States, as represented by the Administrator of the U.S. Environmental Protection Agency, is joint owner of the patent by assignment from its employee inventor (Reel/Frame 7232/0151, recorded December 9, 1994). Acurex Environmental Corp. (now ARCADIS Geraghty & Miller, Inc.) is joint owner of the patent by assignment from its employee inventor (Reel/Frame 7489/0127, recorded May 25, 1995). The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government patent licensing regulations at 37 CFR part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Acting Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Assistant Administrator for Research and Development or to a laboratory director who has been delegated the authority to issue patent licenses under 35 U.S.C. 207.

DATES: Comments to this notice must be received by EPA at the address listed below by April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Acting Patent Counsel, Office of General Counsel (Mail Code 2377), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 260–7510.

Dated: February 17, 1999.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 99–4968 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6305–3]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patent listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patent, to International Fuel Cells, South Windsor, Connecticut. The patent is:

U.S. Patent No. 5,451,249, entitled ''Landfill Gas Treatment System,'' issued September 19, 1995.

The invention was announced as being available for licensing in the April 26, 1995 issue of the **Federal Register** (60 FR 20490, 20491) as U.S. Patent Application No. 08/241,113, filed May 10, 1994. International Fuel Cells is joint owner of the patent by assignment from its employee inventors (Reel/Frame 7118/0295, recorded September 2, 1994). Although it was not printed on the face of the patent, the Government of the United States, as represented by the Administrator of the U.S. Environmental Protection Agency, is also joint owner of the patent by assignment from its employee inventor (Reel/Frame 7496/0496, recorded May 19, 1995). The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government patent licensing regulations at 37 CFR part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Acting Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Assistant Administrator for Research and Development or to a laboratory director who has been delegated the authority to issue patent licenses under 35 U.S.C. 207.

DATES: Comments to this notice must be received by EPA at the address listed below by April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Acting Patent Counsel, Office of General Counsel (Mail Code 2377), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 260–7510.

Dated: February 17, 1999.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 99–4967 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–UT; FRL–6060–5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Utah Authorization of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 31, 1998, the State of Utah submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Today's notice announces the approval of Utah's application, and the authorization of the Utah Department of Environmental Quality, Division of Air Quality's Lead-Based Paint Activities Program to apply in the State of Utah effective August 31, 1998, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-Based Paint Activities Program authorization was granted to the State of Utah effective on August 31, 1998.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, Environmental Protection Agency, Region VIII, 8P-P3-T, 999 18th St., Suite 500, Denver, CO 80202–2466; Telephone: 303–312–6021; e-mail address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), entitled Lead Exposure Reduction.

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint

activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Notice of Utah's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of October 28, 1998 (63 FR 57682) (FRL–6037–5). As determined by EPA's review and assessment, Utah's application successfully demonstrated that the State's Lead-Based Paint Activities Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Utah's application.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), 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 OMB 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly 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 OMB, 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 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 action 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 Executive Order 13084 do not apply to this action.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: February 12, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–4973 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–53; DA 99–294]

Private Land Mobile Radio Services, New England Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice amending the New England Area Public Safety Regional Plan (Region 19 Plan). This action revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the New England area. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, DC, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The full text of the Public Notice is as follows: By this Public Notice, the Commission announces that the New England Area (Region 19) Radio Planning Committee's proposal to amend the Region 19 Public Safety Regional Plan is approved. This action which revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the New England area, reflects changes made as a result of its fourth window application process. In accordance with the National Public Safety Plan, each region is responsible for the operation and management of the mutual aid channels. The Region 19 Plan was originally adopted by the Commission on April 26, 1990. The Region 19 Plan was subsequently revised by letter on February 28, 1995 and October 30, 1996. On October 30, 1998, the Commission issued a Public Notice (Report No. WT 98–37) inviting interested parties to file comments regarding a proposed amendment to the Region 19 Plan that was filed with the Commission on September 14, 1998. We have reviewed the Region 19 request. This action is a minor change to the Region 19 Plan. Further, we have received no comments in response to the Public Notice of October 30, 1998. This action is therefore, accepted and approved as submitted. The Secretary's office will place the amended Region 19 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 19 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 19 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

John Clark,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–4613 Filed 2–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1261–DR]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1261–DR), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1999:

Fayette County for the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4978 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Hempstead County for Public Assistance.

St. Francis County for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4979 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Bradley, Chicot, Columbia, and Miller Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4980 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 18, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Drew County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4981 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1267–DR]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1267–DR), dated February 9, 1999 and related determinations.

EFFECTIVE DATE: February 9, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 9, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from a severe freeze on December 20–28, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of California.

You are authorized to provide Disaster Unemployment Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Disaster Unemployment Assistance and administrative expenses in the designated areas.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Lowder of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Disaster Unemployment Assistance for the counties of Fresno, Kern, Kings, Madera, Monterey, and Tulare.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–4982 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3137–EM]

Michigan; Amendment No. 3 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Michigan, (FEMA–3137–EM), dated January 27, 1999, and related determinations.

EFFECTIVE DATE: February 19, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Michigan, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 27, 1999:

Iosco County for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4984 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3136–EM]

New York; Amendment No. 3 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3136–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New York, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 15, 1999:

Lewis County for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–4983 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1260–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1260–DR), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul W. Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Glenn C. Woodard as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–4977 Filed 2–26–99; 8:45 am]

BILLING CODE 6718–02–P

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 March 25, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Santander, S.A., Madrid, Spain; to acquire 100 percent of the voting shares of Banco Central Hispanoamericano, S.A., Madrid, Spain, and thereby indirectly acquire Banco Central Hispano-USA, New York, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Independence Bancorp, New Albany, Indiana; to become a bank holding company by acquiring 100

percent of the voting shares of Crawford Financial Corporation, Indianapolis, Indiana, and thereby indirectly acquire Marengo State Bank, Marengo, Indiana.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community State Bancshares, Inc., Wichita, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Wichita, Inc., Wichita, Kansas.

Board of Governors of the Federal Reserve System, February 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–4865 Filed 2–26–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History; Meeting

AGENCY: General Services Administration.

ACTION: Meeting Notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 9:00 a.m. to Noon on Tuesday, March 16, 1999, at the State Plaza Hotel, 2116 F Street, NW, Washington, DC 20037. The State Plaza Hotel telephone number is (202) 861–8200.

PURPOSE: To review the recommendations for the President's final report.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–2272, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to martha.davis@gsa.gov.

Dated: February 24, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99–5028 Filed 2–26–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Briefing on Novel Breast Imaging

AGENCY: U.S. Public Health Service's Office on Women's Health, HHS.

ACTION: Notice of Meeting.

SUMMARY: The Federal Technology Transfer Program to Advance Novel Breast Imaging for Early Diagnosis and Treatment of Breast Cancer, sponsored by the U.S. Public Health Service's Office on Women's Health (PHS OWH) will hold a public briefing at which the public will have the opportunity to hear progress reports and results from the key investigators of the Federal Technology Transfer Program to Advance Novel Breast Imaging for Early Diagnosis and Treatment of Breast Cancer. The updates will include the seven major projects: (1) International MRI Working Group, with the goal to develop a strategic plan for critical research and development in breast MRI; (2) International Expert Group in Ultrasound Imaging of the Breast, co-sponsored by the Ultrasound Commission of the American College of Radiology, to review the current state-of-the-art technology and develop a future research agenda; (3) Multi-Institutional Clinical Testing of Digital Mammography; (4) Clinical Evaluation of Digital Display Technologies and Workstation Design in Mammography Compared to Conventional, Film-Based Image Interpretation; (5) Evaluation of Computer-Aided Diagnosis for Quality Assurance in Digital Mammography; (6) Development and Feasibility Testing of Image-Guided Administration of focused ultrasound energy that may replace open surgery with minimally invasive, cost-effective, ambulatory procedures; and (7) Transfer of Intelligent Technologies for Early Diagnosis of Breast Cancer.

DATES: From 1 p.m. to 5 p.m. on April 8, 1999 and from 8 a.m. to 5 p.m. on April 9, 1999.

ADDRESSES: The Hubert Humphrey Building, in the First Floor Auditorium, 200 Independence Avenue, SW, Washington, DC 20201. The briefing will be entirely open to the public. In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification will need to have the guard call PHS OWH at (202) 690–7650 for an escort to the meeting.

FOR FURTHER INFORMATION CONTACT: Holly Dodge of Prospect Associates, 10720 Columbia Pike, Suite 500, Silver Spring, MD 20901, Phone Number (301) 592–8600.

Dated: February 3, 1999.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health), U.S. Public Health Service's Office on Women's Health, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 99–4870 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 64 FR 6092, February 8, 1999) is amended to reflect changes in Chapter PB within Part P, Program Support Center, Department of Health and Human Services. The Program Support Center is consolidating the commissioned corps functions within the *Division of Commissioned Personnel* of the *Human Resources Service.* The *Business Systems Engineering Division* is being abolished and its functions are being transferred to the *Division of Commissioned Personnel.*

Program Support Center

Under *Part P, Section P–20, Functions,* change the following:

Under *Chapter PB, Human Resources Service (PB),* delete the title and functional statement for the *Business Systems Engineering Division (PBF)* in its entirety.

Under the heading *Division of Commissioned Personnel (PBJ),* add the following new items after item (7): ''(8) Administers the full range of human resource ADP support systems to manage the Commissioned Corps personnel system of the Public Health Service; (9) Performs systems analysis, design, development, testing, documentation and production for changes, enhancements and new requirements to the Commissioned Corps human resource ADP support systems; and (10) Schedules, operates and maintains systems applications, including the production of official personnel orders and monthly payroll transactions for the U.S. Treasury.''

Dated: February 22, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–4874 Filed 2–26–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 99034]

Surveillance of Hazardous Substances Emergency Events; Notice of the Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to conduct surveillance of hazardous substances emergency events. This program addresses the ''Healthy People 2000'' priority area of Surveillance and Data Systems and Environmental Health.

The primary purpose of this program is to assist state health departments in developing a state-based surveillance system for monitoring hazardous substances emergency events. This will allow the state health department to better understand the public health impact of hazardous substances emergencies through this added capacity.

The objectives of the surveillance system are to:

1. Describe the distribution of hazardous substances emergencies within individual states, as well as, nationally;
2. Describe the type and cause of morbidity and mortality experienced by employees, first responders, and the general public as a result of selected hazardous substances emergencies;
3. Analyze and describe risk factors associated with the morbidity and mortality; and
4. Develop and propose strategies to reduce subsequent morbidity and mortality when comparable events occur in the future.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, American Samoa and federally-recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States.

C. Availability of Funds

Approximately $1,000,000 may be available in FY 1999 to fund approximately 14 new and/or competing continuation awards. It is expected that the average award will be $70,000, ranging from $60,000 to $80,000. The awards are expected to begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Equipment may be purchased with cooperative agreement funds, however justification must be provided which should include a cost comparison of purchase versus lease options. All purchased equipment must be compatible with ATSDR equipment and shall be returned to ATSDR at the completion of the project.

Funding Priorities

Priority will be given to the following:

1. Geographic distribution across the entire United States.
2. Representation from both agricultural and industrial areas.
3. Areas reporting higher numbers of events. (It is expected that a surveillance system will cover an entire state unless justified by population and industry density.)
4. Electronic data management/transfer capabilities, and in-kind technical support.

D. Program Requirements

All Hazardous Substances Emergency Event Surveillance (HSEES) will be performed in accordance with the methodology described in the HSEES protocol provided. The protocol was developed to meet the objectives outlined under PURPOSE. A copy of the protocol is provided in the application kit.

Cooperative Activities

To achieve the purpose of this program, the recipient shall be responsible for conducting activities under 1., below, and ATSDR will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Develop a mechanism that ensures that the state health department is notified of hazardous substance emergency events in a timely fashion. This should include negotiating formal or informal agreements with all State agencies that are normally notified when hazardous substances emergencies have occurred. These State agencies should include, but not be limited to, State police and fire departments, environmental agencies, and various offices of emergency government.

b. Investigate the emergency event by gathering and entering the information obtained from all sources into the HSEES tracking system. Sources may include, but are not limited to, those agencies mentioned in 1a., and other relevant Federal, State, local, and private agencies in keeping with the surveillance protocol.

c. Establish and maintain appropriate procedures to ensure the timely gathering and entering of the information into a database as prescribed by the HSEES protocol.

d. Disseminate data to those who can use it for prevention activities.

e. Participate in quality control and quality assurance activities.

f. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

2. ATSDR Activities

a. Assist recipients in acquiring appropriate information for performance of HSEES and evaluating the completeness and quality of relevant information.

b. Provide prototype information gathering instrument.

c. Assist recipients in establishing and maintaining appropriate and timely schedules for the HSEES surveillance process.

d. Assist recipients in selecting training that will be useful in maintaining the surveillance system.

e. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed (whether a new applicant or a competing continuation applicant) so it is important to follow them in laying out your program plan. The application pages must be clearly numbered, and a complete index to the application and its appendices must be included. A less than 200 word abstract of the proposed project should be supplied with the application. The original and two copies of the applications must be submitted unstapled and unbound. All material

must be typed single-spaced, with unreduced font on 8 1/2'' by 11'' paper, with at least 1'' margins, and printed on one side only.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before May 14, 1999, submit the application to: Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99034, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

(By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in a. or b. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each new and competing renewal application will be evaluated individually against the following criteria by an objective review group appointed by ATSDR.

1. Appropriateness and Knowledge of Surveillance System (20 percent)

New Applicants

Demonstrate a need for such a surveillance system within their State. Demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

Competing Continuation Applicants

Applicant must demonstrate experience in collecting emergency event surveillance information within the State. This should include, but not be limited to, an assessment of the extent of hazardous substances emergencies and/or the morbidity and mortality associated with these events. Demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

2. Proposed Methodology (25 percent)

New Applicants

Applicant must demonstrate experience in, or an ability to develop, implement, maintain, and evaluate surveillance systems in accordance with the HSEES Protocol.

Competing Continuation Applicants

Applicant must demonstrate experience in HSEES. This should include the development, implementation, maintenance, and evaluation of a HSEES system in accordance with the surveillance protocol.

3. Capability and Coordination Efforts (20 percent)

New Applicants

Demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. Letters of support should accompany the application.

Competing Continuation Applicants

Applicant must demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. Letters of support should accompany application.

4. Quality of Information Collection (15 percent)

New Applicants

Applicant should describe experience in collaborative projects for which the agency has had the responsibility of collecting information in a consistent format. Examples include surveillance projects, surveys, and prospective or retrospective hypothesis testing studies. The timely submission of data for analysis is critical in insuring the success of this surveillance. Accordingly, the applicant must demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

Competing Continuation Applicants

Applicant should describe previous experience in HSEES systems, including collecting information for which the organization is responsible in a consistent format. Of critical importance to the success of the surveillance project is the timely submission of data for analysis. The applicant must demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

5. Dissemination of Information for Prevention Efforts (10 percent)

New Applicants

Demonstrate experience in data dissemination for prevention efforts. Discuss future plans for prevention of hazardous substances emergency events related morbidity and mortality.

Competing Continuation Applicants

Demonstrate experience in HSEES data dissemination for prevention of hazardous substances emergency events related morbidity and mortality. Discuss future plans for prevention of hazardous substances emergency events related morbidity and mortality.

6. Program Personnel (10 percent)

Demonstrate that the proposed program staff are qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologists, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

7. Program Budget (Not scored)

Budget must be reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. Annual progress report (include a 200 word or less abstract),

2. Financial Status Report (FSR) no more than 90 days after the end of the budget period,

3. Final financial report and performance report, no more than 90 days after the end of the project period, and

4. Electronically provide ATSDR with surveillance data as per protocol

Send all reports to: Nelda Y. Godfrey, Grants Management Specialist, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

The following additional requirements are applicable to this program. For complete description of each, see Attachment I.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under number (0923–0008), ''Hazardous Substances Emergency Event Surveillance,'' 8/31/2001.
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–19 Third Party Agreements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized in Sections 104(i)(1)(E)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)(1)(E)(15)]. The Catalog of Federal Domestic Assistance number is 93.161.

J. Where To Obtain Additional Information

Please refer to Program Announcement 99034 when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of the application kit please contact: Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99034, Centers for Disease Control and Prevention (CDC), 2929 Brandywine Road, Mailstop E–13, Atlanta, Georgia 30341, Telephone: (404) 842–6671, E-mail address: NAG9@cdc.gov.

To obtain technical assistance, contact: Dr. Wendy Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, N.E., Mailstop E–31, Atlanta, Georgia 30333, Telephone: (404) 639–6203, E-mail address: WEK1@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov

Dated: February 23, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs.

[FR Doc. 99–4927 Filed 2–26–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–144]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of two new final and seven updated final toxicological profiles of priority hazardous substances comprising the eleventh set prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on November 17, 1997 (62 FR 61332). For prior versions of the list of substances see **Federal Register** notices dated April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

Notices (62 FR 55816) and (62 FR 55818) announcing the availability of the draft toxicological profiles for public review and comment were published in the **Federal Register** on October 28, 1997 with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control numbers ATSDR–127 or ATSDR–128. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of two new final and seven updated final toxicological profiles comprising the eleventh set prepared by ATSDR. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Eleventh Set:		
1. CHLOROETHANE (UPDATE)	PB99–121956	000075–00–3
2. CHLOROMETHANE (UPDATE)	PB99–121964	000074–87–3
3. 1,4-DICHLOROBENZENE (UPDATE)	PB99–121972	000106–46–7
4. 3,3,-DICHLOROBENZIDINE (UPDATE)	PB99–121980	00091–94–1

Toxicological profile	NTIS Order No.	CAS No.
5. CHLORODIBENZO-P-DIOXIN (UPDATE)	PB99–121998	039227–53–7
DICHLORODIBENZO-P-DIOXIN		050585–39–2
HEPTACHLORODIBENZO-P-DIOXIN		037871–00–4
HEXACHLORODIBENZO-P-DIOXIN		034465–46–8
OCTACHLORODIBENZO-P-DIOXIN		003268–87–9
PENTACHLORODIBENZO-P-DIOXIN		036088–22–9
TRICHLORODIBENZO-P-DIOXIN		039227–58–2
TETRACHLORODIBENZO-P-DIOXIN		041903–57–5
1,2,3,4,6,7,8-HEPTACHLORODIBENZO-P-DIOXIN		035822–46–9
6. 2,4-DINITROTOLUENE (UPDATE) and 2,6-DINITROTOLUENE	PB99–122004	000121–14–2 000606–20–2
7. PHENOL (UPDATE)	PB99–122012	000108–95–2
8. SULFUR DIOXIDE	PB99–122020	007446–09–5
9. SULFUR TRIOXIDE and SULFURIC ACID	PB99–122036	007446–11–9 007664–93–9

Dated: February 22, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–4926 Filed 2–26–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Info–99–10]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Project

1. National Surveillance of Dialysis-Associated Diseases (0920–0009)—Reinstatement—National Center for Infectious Diseases (NCID). The Hospital Infectious Program, NCID is proposing renewal of a yearly mail survey of dialysis practices and dialysis-associated diseases at U.S. outpatient hemodialysis centers. The rehabilitation of individuals in the United States who suffer from chronic renal failure has been identified as an important national priority; and since 1973, chronic hemodialysis patients have been provided financial support by the Federal Government. The Hospital Infections Program and the Hepatitis Branch, Division of Viral and Rickettsial Diseases, Centers for Disease Control and Prevention, have responsibility for formulating strategies for the control of hepatitis, bacteremia, pyrogenic reactions, and other hemodialysis-associated disease.

In order to devise such control measures, it is necessary to determine the extent to which the incidence of these dialysis-associated diseases changes over time. This request is to continue surveillance activities among chronic hemodialysis centers nationwide. In addition, once control measures are recommended it is essential that such measures be monitored to determine their effectiveness. The survey is conducted once a year by mailing it to all chronic hemodialysis centers licensed by the Health Care Financing Administration (HCFA). Dialysis practices surveyed include the use of hepatitis B vaccine in patients and staff members, whether isolation rooms are used to treat hepatitis B surface antigen-positive patients, the types of vascular access and dialyzers used, whether certain dialysis items are disinfected for reuse, and whether the dialysis center has any policy for insuring judicious use of antimicrobial agents. Among dialysis-associated diseases, the survey includes hepatitis B virus infection, antibody to hepatitis C virus, antibody to human immunodeficiency virus, pyrogenic reactions, and vancomycin-resistant enterococci. The total cost of the respondents is $128,000.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (In hrs.)	Total response burden (In hrs.)
Chronic Hemodialysis Centers	3,200	1	1	3,200
Total				3,200

2. Survey of Private Industry Users of Data from the National Health and Nutrition Examination Survey—NEW—The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics (NCHS), CDC. NHANES data are collected in two phases, a household

interview and an examination in mobile examination centers that travel throughout the country. The survey is the only source of nationally representative examination and biological specimen data for many important diseases and has often provided useful information on new technologies such as Dual Energy X-ray Absorptiometry, a method used to diagnose osteoporosis. NHANES has been extensively used by the public health and medical research communities to address a wide range of public health problems, including hypertension, diabetes, cholesterol, obesity, lead exposure, and sexually transmitted diseases. Most of our users appear to be based in traditional academic and public health settings. However, many important efforts to promote public health occur in the private sector, whether in the direct delivery of services or in the development of new treatment and diagnostic modalities. Based on inquiries received by the division, the NHANES data are used by private industry, including the pharmaceutical industry and the health care delivery industry, for a variety of purposes. However, little is known of the extent of use of the data for these industries and for the related biotechnology industries and how the data are used.

The objectives of the proposed survey are to (1) describe the extent of use of the NHANES data by the private health care delivery, pharmaceutical, and biotechnology industries, (2) describe the purpose for which the data are used by these industries, and (3) explore ways to improve the use of these data by private industry to improve the health of the population.

Although similar questions are appropriate for other NCHS administered data collection efforts, NHANES data are unique among NCHS data efforts in its reliance on biological measurements and its direct clinical relevance. This survey will focus specifically on the unique relevance of NHANES examination and biologic specimen data but will include collection of data on general awareness of NCHS data collection efforts. The results may be used to determine the feasibility of collecting data targeted to other NCHS data collection efforts.

Survey respondents will be identified through a range of mechanisms including identifying names of public health, epidemiology, and health services research unit directors at major pharmaceutical, health care delivery organizations (including HMOs), and biotechnology companies through industry organizations and by referral. The goal is to identify both current users and non-users of the data. The survey will be voluntary and confidential. The survey will use an interview format with open-ended questions to address the proposed study objectives. Primarily qualitative survey methods will be used to evaluate the data. The total cost to respondents is estimated to be $10,000.

Respondents	Number of respondents	Number of responses/ respondent	Avg burden/ response (In hrs.)	Total response burden (In hrs.)
Private Industry NHANES Data Users	200	1	1	200
Total				200

3. Evaluation of NCIPC Recommendations on Bicycle Helmet Use—Reinstatement—The National Center for Injury Prevention and Control's (NCIPC), Division of Unintentional Injury Prevention (DUIP) intends to continue to conduct a survey of 1,300 persons from its mailing lists and lists of recipients of recommendations on the use of bicycle helmets in preventing head injuries. These recommendations were published in the Morbidity and Mortality Weekly Report of February 17, 1995.

The purpose of this survey is to determine:

I. The penetration of the recommendations distribution,

II. The usefulness of the bicycle helmet recommendations,

III. How to improve the recommendations' content and format,

IV. Potential future DUIP bicycle helmet promotional activities,

V. Information needs and access points of DUIP's ''customers''

Results from this research will be used to (1) assist DUIP in producing an updated version of the helmet recommendations; (2) identify new helmet promotion programmatic directions; and (3) develop future materials that meet the needs of DUIP ''customers.''

The study will be done by telephone.

The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/ respondent	Avg burden/ response (In hrs.)	Total response burden (In hrs.)
Individual	1,300	1	.33	429
Total				429

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–4925 Filed 2–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0240]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension for an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for development of residue detection methodology for human or animal drug(s) prescribed for extra label use in animals, when the agency has determined their is reasonable probability this use may present a risk to public health due to residues exceeding a safe level.

DATES: Submit written comments on the collection of information byApril 30, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control No. 0910–0325— Extension)

Description: The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA), (Pub. L. 103–396), amended the Federal Food, Drug, and Cosmetic Act to permit licensed veterinarians to prescribe extralabel use in animals of approved human and animal drugs. Regulations implementing provisions of AMDUCA are codified under part 530 (21 CFR part 530). A new provision under these regulations, § 530.22(b), permits FDA to establish a safe level for extralabel use in animals, of an approved human or animal drug when the agency determines there is reasonable probability that this use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding the safe level is considered an unsafe use of a drug. In conjunction with the establishment of a safe level, the new provision permits FDA to request development of an acceptable residue detection method for an analysis of residues above any safe level established under part 530. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and perhaps a third party, (e.g., a State agency or a professional association), may negotiate a cooperative arrangement to develop the methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug. The respondents may be sponsors of new animal drug(s), State or Federal government, or individuals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22(b)	2	1	2	4,160	8,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for this reporting requirement is based on the agency's communication with industry. The agency recognizes that the time to develop residue detection methodology is highly variable and dependent upon the level of difficulty to a certain extent. Based on this information, FDA estimates that two methods of intermediate difficulty for one to two drugs per year would be developed.

Dated: February 23, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–4875 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 23, 1999, 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20057, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–051 Temodal® (temozolomide) Capsules, Schering Corp., indicated for the treatment of patients with advanced metastatic malignant melanoma.

Procedure: On March 23, 1999, from 8 a.m. to 12:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 8, 1999. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 9:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 15-minute open public session will be conducted for interested persons who have submitted their request to speak by March 8, 1999, to address issues specific to the submission or topic before the committee.

Closed Committee Deliberations: On March 23, 1999, from 1 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug application and Phase I and Phase II drug products in process will be presented, and recent action on selected NDA's will be discussed. This portion of the meeting will be closed to permit discussion of this information.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 22, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–4876 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0794]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zemplar

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Zemplar and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Zemplar (paricalcitol). Zemplar is indicated for the prevention and treatment of secondary hyperparathyroidism associated with chronic renal failure. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Zemplar (U.S. Patent No. 5,246,925) from Wisconsin Alumni Research Foundation, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 16, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Zemplar represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Zemplar is 1,079 days. Of this time, 623 days occurred during the testing phase of the regulatory review period, while 456 days occurred during the approval

phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: May 6, 1995. The applicant claims April 30, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 6, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: January 17, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Zemplar (NDA 20–819) was initially submitted on January 17, 1997.

3. *The date the application was approved: April 17, 1998*. FDA has verified the applicant's claim that NDA 20–819 was approved on April 17, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 574 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 30, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 30, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–4877 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Extension

This clearance request is for a revision of two forms that are currently approved by OMB. HEAL lenders use the Lenders Application for Insurance Claim to request payment from the Federal Government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Lenders Application for Insurance Claim form has been revised to reflect information necessary to approve a claim and is substantiated in supporting documentation submitted with each claim request. These revisions will facilitate the Department's efforts towards electronic claim request submissions. The Request for Collection Assistance form is used by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers. No changes are proposed for the Request for Collection Assistance form.

The estimates of annualized burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Lender's Application for Insurance Claim	20	75	1,500	30 minutes	750
Request for Collection Assistance	20	1,260	25,200	10 minutes	4,208
Total Burden	20				4,958

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4948 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Project to Assess Ethnicity/Race and Services to Bi/Multilingual Populations in Community and Migrant Health Centers—NEW

The Office of Minority and Women's Health (OMWH) in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA), recognizes that full understanding of the ethnicity of clients and providers and the provision of language appropriate services are vital to guaranteeing full and effective health care. OMWH proposes to conduct a voluntary survey, the purpose of which will be two-fold: (1) To obtain detailed data on the ethnic/racial composition of health center users and providers; and (2) to collect information about the composition and provision of bi/multilingual services. This information will be collected from a sample of approximately 150 health centers.

These data will provide HRSA with information which will be used to make resource and staffing decisions related to reducing barriers to health care often faced by ethnic/racial minorities and by non- or limited-English-speaking populations.

The burden estimate for this project is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Survey	150	1	150	2	300

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4949 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (OMB No. 0915–0047)—Extension

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of rights and responsibilities, that schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use improved information technology to manage the information required by the regulations.

The burden estimate is as follows:

RECORDKEEPING REQUIREMENTS

Regulatory/section requirements	Number of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2), Documentation of Cost of Attendance	281	1.17	329
57.208(a), Promissory Note	281	1.25	351
57.210(b)(1)(i), Documentation of Entrance Interview	281	1.25	351
57.210(b)(1)(ii), Documentation of Exit Interview	*307	0.33	101
57.215(a)&(d), Program Records	*307	10.	3,070
57.215(b), Student Records	*307	10.	3,070
57.215(c), Repayment Records	*307	18.75	5,756
HPSL Subtotal	307		13,028
NSL Program:			
57.306(b)(2)(ii), Documentation of Cost of Attendance	382	0.3	115
57.308(a), Promissory Note	382	0.5	191
57.310(b)(1)(i), Documentation of Entrance Interview	382	0.5	191
57.310(b)(1)(ii), Documentation of Exit Interview	*814	0.17	138
57.315(a)(1)&(a)(4), Program Records	*814	5.	4,070
57.315(a)(2), Student Records	*814	1.	814
57.315(a)(3), Repayment Records	*814	2.5	2,035
NSL Subtotal	814		7,554

*Includes active and closing schools.

Reporting Requirements

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
HPSL Program:					
57.205(a)(2), Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.206(a)(2), Student Financial Aid Transcript	5,000	1.	5,000	0.25	1,250
57.208(c), Loan Information Disclosure	281	74.73	21,000	0.0833	1,749
57.210(a)(3) Deferment Eligibility	[Burden included under 0915–0044]				
57.210(b)(1)(i), Entrance Interview	281	74.73	21,000	0.167	3,507
57.210(b)(1)(ii), Exit Interview	*307	16.28	5,000	0.5	2,500
57.210(b)(1)(iii), Notification of Repayment	*307	35.83	11,000	0.167	1,837
57.210(b)(1)(iv), Notification During Deferment	*307	29.32	9,000	0.0833	749
57.210(b)(1)(vi), Notification of Delinquent Accounts	*307	15.28	5,000	0.167	835
57.210(b)(1)(x), Credit Bureau Notification	*307	13.03	4,000	0.6	2,400
57.210(b)(4)(i), Write-off of Uncollectible Loans	24	1.67	40	0.5	20
57.211(a), Disability Cancellation	12	1.	12	.75	9
57.215(a), Reports	[Burden included under 0915–0044]				
57.215(a)(2), Administrative Hearings	0	0	0	0	0
57.216(a)(d), Administrative Hearings	0	0	0	0	0
HPSL Subtotal	5,307		81,052		14,856
NSL Program:					
57.305(a)(2), Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.306(a)(2), Student Financial Aid Transcript	3,000	1.	3,000	0.25	750
57.310(b)(1)(i), Entrance Interview	382	31.41	12,000	0.167	2,004
57.310(b)(1)(ii), Exit Interview	*814	4.91	4,000	0.5	2,000
57.301(b)(1)(iii), Notification of Repayment	*814	8.23	6,700	0.167	1,119
57.310(b)(1)(iv), Notification During Deferment	*814	0.86	700	0.083	58
57.310(b)(1)(vi), Notification of Delinquent Accounts	*814	6.14	5,000	0.167	835
57.310(b)(1)(x), Credit Bureau Notification	*814	11.06	9,000	0.6	5,400
57.310(b)(4)(i), Write-off of Uncollectible Loans	40	1.0	40	0.5	20
57.311(a), Disability Cancellation	10	1.0	10	0.8	8
57.312(a)(3), Evidence of Educational Loans	[Inactive provision]				
57.315(a)(1), Reports	[Burden included under 0915–0044]				
57.315(a)(1)(ii), Administrative Hearings	0	0	0	0	0
57.316(a)(d), Administrative Hearings	0	0	0	0	0
NSL Subtotal	3,814		40,450		12,194

* Includes active and closing schools.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 208357. Written comments should be received within 60 days of this notice.

Dated: February 23, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4950 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Status, Behaviors, and Health Service Perceptions of Non-College Educated and College Educated African American Women—New

The Office of Minority and Women's Health (OMWH) in the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA) awarded funding for a pilot study which will develop information about the design of a sample appropriate to determine the health status, behaviors, and health service perceptions of African American women who are: (1) college educated, and (2) low income, non-college educated. The pilot study will be used to evaluate the interview instrument and to discover the practical issues and feasibility of sampling low income African American women from the databases of community health centers in three test locations. The goal is to assess the instrument, the sample sources, the procedures, and the response rates and to determine the extent to which data can be collected in a systematic and comprehensive manner. The pilot study is the first step in a much larger nationwide effort to build a significant data set containing detailed information on health status, health indicators, and health behaviors of African American women.

The burden estimate for the pilot study is as follows:

Respondent	Number of respondents	Responses per respondent	Total responses	Hours per response (minutes)	Total hour burden
College Educated	60	1	60	40	40
Non-College Educated	180	1	180	40	120
Total	240	.....	240	.....	160

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 23, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4951 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank Announcement of Self-Query Fee

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a ten dollar fee for health care practitioners who request information about themselves (self-queries) from the National Practitioner Data Bank (NPDB).

The current fee structure for requests for information (queries) by authorized entities was announced in the **Federal Register** on January 29, 1998 (63 FR 4460).

In accordance with the Final Rule published elsewhere in this issue, the Department now is exercising its authority to impose a fee for self-queries.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and for providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12(b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1999, Pub. L. 105–277, enacted October 19, 1998. This Act requires that the Department recover the full costs of operating the NPDB through user fees. Paragraph (b) of the regulations states:

> The amount of each fee will be determined based on the following criteria:
>
> (1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,
>
> (2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,
>
> (3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

Based on analysis of the costs of processing self-queries, the Department is establishing a ten dollar fee per self-query. In contrast to queries submitted by authorized entities (which are submitted electronically), the NPDB incurs substantial labor costs for manual data input, sorting, and responding to calls for Helpline assistance in order to process self-queries. Additionally, the NPDB incurs substantial postage and packaging costs for mailing self-query results to practitioners.

In order to minimize the fee, the Department will accept payment for self-queries only by credit card. The NPDB accepts Visa, MasterCard, and Discover. This fee is effective March 31, 1999. All other user fees remain the same. For examples, see the table below.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Telecommunications network) with electronic payment.	$4.00 (if paid electronically via credit card or other electronic means and respose received electronically).	10 names in query. 10x$4=$40.00.
Electronic query (Telecommunications network) with non-electronic payment.	$8.00 (if not paid via credit card or other electronic means) ($4.00 fee plus $4.00 surcharge).	10 names in query. 10x$8=$80.00.
Self-query	$10.00 (must be paid via credit card)	1 self-query=$10.00.

Dated: December 11, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 99–4872 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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 individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Transgenic Mice Expressing CRE-Recombinase in Specific Renal Tubule Segments.

Date: February 24, 1999.

Time: 10:00 am to 11:00 am.

Agenda: To review and evaluate contract proposals.

Place: Rockledge II, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ivan C. Baines, Phd. Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922, 301/435–0277.

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.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SBIR Contract Proposals (NIHLBI SBIR RFP HL–98–026).

Date: February 25, 1999.

Time: 9:00 am to 9:30 am.

Agenda: To review and evaluate contract proposals.

Place: NIH–Rockledge II Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ivan C. Baines, PHD Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922, 301/435–0277.

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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4929 Filed 2–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings 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 Mental Health Special Emphasis Panel.

Date: February 24, 1999.

Time: 10 am to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 25, 1999.

Time: 2:30 pm to 3:30 pm.

Agenda: to review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Jean G. Noronha, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientific Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 22, 1999.

Anna Snouffer,

Acting Committee Management Officer, National Institutes of Health.

[FR Doc. 99–4893 Filed 2–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 Board of Governors of the Warren Grant Magnuson Clinical Center.

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: Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee Meeting.

Date: March 22, 1999.

Time: 9:00 am to 12:00 pm.

Agenda: Updates on organizational planning and budget issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: February 23, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–4928 Filed 2–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Prepare an Environmental Impact Statement

AGENCIES: Fish and Wildlife Service, Interior, Forest Service, Department of Agriculture; and Oregon Department of Fish and Wildlife.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service), and the Oregon Department of Fish and Wildlife (ODFW) intend to develop an Environmental Impact Statement (EIS). The Forest Service will also cooperate in the development of the EIS. The EIS will consider Federal and State actions associated with an ODFW proposal to restore the recreational fishery at Diamond Lake, Oregon. ODFW has proposed to treat the lake with rotenone, a fish toxicant, to kill all fish present, and to restock the lake with rainbow trout. The associated actions are: (1) The Service granting Federal Aid in Sport Fish Restoration Act Program funding to ODFW for implementing a Diamond Lake recreational fishery restoration program; (2) the Forest Service issuing ODFW a special use permit for access through, and use of, National Forest lands to Diamond Lake for implementing a recreation fishery restoration program; (3) ODFW implementing a Diamond Lake recreational fishery restoration program.

The EIS will also consider any actions by other Federal or State agencies that are necessary or appropriate to implement a trout fishery restoration program. This notice is being furnished pursuant to the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the EIS.

DATES: As an opportunity for interested persons to comment on the issues and alternatives of the EIS, public scoping meetings are scheduled as follows: March 8, Jackson County Public Works Office, 200 Antelope Road, Medford, Oregon, 3:30–7:00 p.m.; March 9, ODFW Regional Office, 4192 N. Umpqua Highway, Roseburg, Oregon, 3:30–7:00 p.m.

ADDRESSES: Comments regarding the scope of the EIS should be addressed to Mr. Jerry F. Novotny, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232, 503/231–6128. Comments should be received on or before March 31, 1999, at the above address. Written comments may also be sent by facsimile to 503/231–6996. Comments received will be available for public inspection by appointment during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday) at the above office; please call for an appointment. All comments received will become part of the administrative record and may be released.

FOR FURTHER INFORMATION CONTACT: Contact Jerry F. Novotny at the above address and telephone number. Specific information regarding National Forest lands may be obtained from Liz Stevenson-Shaw, Supervisor's Office, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470, 541/957–3391. Information concerning ODFW fishery management programs may be obtained from Charlie Corrarino, Oregon Department of Fish and Wildlife, 2501 S.W. First, Portland, Oregon 97207, 503/872–5252.

SUPPLEMENTARY INFORMATION: Diamond Lake is located in the Umpqua River basin in Douglas County, Oregon. It is within the Umpqua National Forest and just north of the boundaries of Crater Lake National Park. Diamond Lake is a natural lake situated at an elevation of 5,182 feet in the Cascade mountains. The Lake has a surface area of approximately 2, 930 acres and is relatively shallow, with a maximum depth of just over 50 feet. Diamond Lake drains into Lake Creek, which empties into Lemolo Reservoir, an impoundment on the North Umpqua River. Two other impoundments are located downstream from Lemolo Reservoir on the North Umpqua River. The flow of water from Lemolo Reservoir and the other impoundments is regulated by Pacificorp, a public utilities corporation.

The lake is a popular recreation destination; as such, it is important to the economy of southern Oregon. In recent years, the lake's trout fishery has deteriorated due to competition from tui chub (*Gila bicolor*), an illegally introduced species of minnow. Prior to the introduction of the tui chub, Diamond Lake was recognized as a premier recreational trout fishery. Growth of the tui chub population has caused a severe decline in the survival of fingerling rainbow trout and the subsequent growth of the surviving trout. The same chain of events and outcomes occurred in the 1940's and 1950's, resulting in treatment of the lake with rotenone in 1954. Treatment was followed by about 40 years of a very successful trout fishery.

Two bald eagle and 6–12 osprey pairs nest in the vicinity of Diamond Lake and rely heavily on rainbow trout as a food source for both adults and young. The reduced survival and abundance of rainbow trout may have a negative effect on the breeding success of bald eagles and ospreys since tui chub are much smaller, may be less available, and may

require more catch effort per energy gained than rainbow trout.

Rapidly increasing tui chub populations may be affecting other wildlife populations in and around the lake by severely reducing the invertebrate food base of the lake. This reduced food base affects the entire food chain of the lake, ultimately affecting amphibian and reptile populations as well as insectivorous birds.

In 1990, the Oregon Fish and Wildlife Commission adopted a management plan for Diamond Lake which set objectives for its trout fishery: an average of 100,000 angler trips annually, with a harvest of 2.7 fish per angler trip, and fish averaging 12 inches in length. The annual yield of trout should be about 90 pounds per acre. That objective was based on observed performance of the fishery for more than two decades.

As tui chubs have become increasingly abundant, the trout fishery has substantially declined in terms of catch, effort, and return on fish stocked (survival). While the return on fingerlings stocked was about 70% in the 1960's, 70's and 80's, it has now declined to less than 10%. The decline is due to reduced survival (= increased mortality) of stocked fingerlings; fewer fish surviving means fewer fish to be caught.

In 1990, ODFW spent several months examining available data and consulting with the Forest Service, other agencies and parties, including extensive public outreach regarding the management of the recreational fishery of Diamond Lake. Several options, including doing nothing to change the situation, were evaluated during that public process, including the following:

A. *No Action*—The recreational fishery will continue at its current very low level, and angler use will decline in response to diminished catch rates and smaller fish. Experience at Diamond Lake and at many other lakes and reservoirs suggests that tui chubs will eventually drive trout survival to near zero. Dissatisfaction with fishing may lead some anglers to introduce new species to ''help'' fishing.

B. *Manipulate Stocking Strategies*—Several strategies have been examined for use in the near-term while a lasting resolution is sought. These are management actions intended to mitigate the decline of fingerling trout survival, but which do nothing for the underlying problem. Strategies include stocking larger fingerling rainbow which may be more competitive with chubs than the currently stocked fingerlings, and substitution of catchable-sized rainbow trout for a substantial portion of the fingerlings. Both pose logistical problems in the hatchery system and will come at a cost to trout production for other fisheries; none is capable of solving the current management problem or restoring the quality of fishery desired at Diamond Lake.

C. *Reduce Tui Chub Abundance*—Tui chub abundance could be reduced through extensive netting or partial treatment of shorelines with rotenone. The exploitation rate needed to alleviate competition with trout is unknown but is certainly very high. There is no hard evidence that partial control of tui chubs is a feasible fishery restoration strategy; in fact, partial treatments at Diamond Lake in the 1950s killed millions of chubs without relieving the effects of competition with chubs.

D. *Manage for Different Fishery Objectives*—Instead of attempting to restore a fishery which meets current management objectives, a predaceous fish could be introduced into the lake to feed on chubs. It would be expected to grow to a large size, and provide a fishery on larger fish than at present. This strategy could be used to meet new objectives with much lower catch rates but larger average fish size, fundamentally different than the current high volume, moderate catch rate fishery. Initial survival of fingerlings could still be a problem due to early competition with chubs. This approach would require a new species (such as brown trout) or new stock of rainbow trout (such as the Williamson River stock) capable of feeding extensively on tui chubs. Introduction of new species or stocks will be controversial. There is no basis for assuming that any stocked trout will control chubs (i.e., cause a substantial reduction in abundance due to predation).

E. *Manage for Current Fishery Objectives*—The eradication of the naturally producing population of tui chubs would result in conditions which would allow a return to the fishery described in the ODFW management plan. The Diamond Lake fishery has substantially met those objectives since the early 1960s, and the fishery has been very popular with anglers. In 1996 the Oregon Fish and Wildlife Commission reaffirmed those objectives and directed ODFW staff to begin planning for restoration of the rainbow trout recreational fishery.

On February 2, 1998, the Forest Service published a notice of intent to prepare an environmental impact statement addressing the impacts associated with the temporary drawdown of Diamond Lake to allow ODFW to treat the lake with rotenone. The Forest Service began internal scoping of this proposal in November, 1997. The public was given notice of the proposal in January, 1998 through the Forest's Schedule of Proposed Actions. An informational letter with a copy of the ODFW proposal was mailed to the interested public in January as part of the agency's external scoping effort. Following the mailing, an Open House was held in Roseburg and in Medford, Oregon, as a continuation of the scoping effort. As a result of the scoping performed to date, a number of issues have been identified. These include:

(1) Rotenone treatment (if chosen alternative) would have an adverse effect on other components (non-target species) of the lake biota.

(2) Reducing lake volume (for rotenone treatment) would flush/flood Lake Creek, the downstream tributary.

(3) Effects of high water releases, in the process of lowering Diamond Lake, and added nutrients from rotting fish carcasses, could adversely affect the downstream reservoir.

(4) Re-introduction of non-indigenous hatchery rainbow trout could lead to a repetition of past history (good fishing—tui chub introduction and overpopulation—expensive renovation with a fish toxicant).

(5) This action may not be consistent with the Aquatic Conservation Strategy of the Northwest Forest Plan.

(6) Not restoring the recreational fishery would be an economic hardship to local businesses and would deprive anglers of a traditional sport fishing opportunity.

(7) This action may not comply with appropriate use/diversion of the waters of the lake as implied by ORS 538.140, which states that waters of the lake will not be ''diverted, interrupted, or appropriated for any purpose whatsoever, except for domestic use.''

(8) Introduction of species other than the Oak Springs hatchery strain of rainbow trout currently used may pose ecological risks for fish populations downstream of Diamond Lake.

Following the first round of scoping, the Service and the Forest Service agreed that the environmental review of the proposed action should be broadened. The scope of the EIS, was then expanded to include all anticipated effects of the proposed project, not just the effects of the proposed drawdown of the reservoir. The Service, as the funding agency in this proposed action, agreed to take the lead role, with the Forest Service and ODFW as cooperating agencies. The original Notice of Intent issued by the Forest Service was withdrawn on May 22, 1998.

The expanded EIS will cover the ODFW current proposal to restore the

trout fishery using Federal Aid funding through the USFWS. Possible alternatives include:

(A) Treat the lake with rotenone, a fish toxicant, to remove all fish from the lake and re-stock the lake with hatchery rainbow trout. The lake has been managed for a fishery on hatchery rainbow trout for several decades, following treatment with rotenone in 1954 to eradicate tui chubs.

(B) Take no action to eliminate the tui chub, but begin a program to stock the lake with species of trout that can compete successfully with tui chub. This strategy would fundamentally change the character of the fishery which has been very popular.

(C) Take no action to improve the trout fishery.

Diamond Lake was successfully treated for the same problem in 1954, and there is considerable historical data that documents the biological effects of alternatives A and C. Some recent information is available that indicates limited success with approach B. The agencies are seeking public comments on issues and/or alternatives not identified through previous scoping efforts.

Dated: February 23, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 99–4922 Filed 2–26–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–2800–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0175

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request an extension of approval for the collection of information from holders of right-of-way communication site grants. The BLM uses the informating to determine the amount of annual rent due from the grant holders.

DATES: Comments on the proposed information collection must be received by April 30, 1999 to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team, 1849 C St., NW Room 401LS, Washington, DC 20240. Comments may be sent by Internet to: WOComment@wo.blm.gov. Please include: ''Attn.: 1004–0175'' and your name and address in your Internet message. Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Bil Weigand, Idaho State Office, (208) 373–3850.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR 1320.12(a) require BLM to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of BLM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of collecting the information on those who must respond, including through the use of automated, electronic, mechanical, or technological collection techniques or other forms of information technology.

Section 1764(g) of the Federal Land Policy and Management Act authorizes the Secretary of the Interior to set rents for communication uses located on lands administered by BLM. Rent is defined equivalent to the far market value of the site being occupied. The rental requirements for communication site grants are found in the regulations at 43 CFR 2803.1–2(d). Additionally, BLM California has automated a form for the electronic reporting of the information. Copies of this form are available from Carole Smith, BLM Information Collection Officer, at the address given in the **ADDRESSES** section of this notice.

To calculate the rent, which BLM assesses annually, BLM needs certain information from holders of communication site grants. This information includes the name of the grant holder, the name of the contact person and phone number, the location of the communication site, the names of all tenants in the facility, and the number and type(s) of use(s) in the facility. The information is mandatory to obtain a benefit, using the public lands for communication factilities.

BLM estimates that the public reporting burden for this collection of information is 1 hour per response, including the time to read the instructions and collect and report the information to BLM. The average annual number of respondents is 1,500 . Based on 1 hour per response, the annual burden hours on the respondents are estimated to be 1,500.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will become a matter of public record.

Dated: February 22, 1999.

Carole Smith,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 99–4989 Filed 2–26–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–610–5101–01–B109) CACA–40467]

Cadiz Groundwater Storage and Dry-Year Supply Program Proposed Pipeline and Plan Amendment, San Bernardino County, California

AGENCY: Bureau of Land Management, California Desert District.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of the Interior, Bureau of Land Management (''BLM''), in cooperation with The Metropolitan Water District of Southern California (''Metropolitan''), will prepare a joint Environmental Impact Statement/Environmental Impact Report (''joint EIS/EIR'') for proposed right-of-way for proposed Cadiz Water Storage and Dry-Year Supply Program (''Project'') on Federal lands in the Mojave Desert Region of San Bernardino County, California. The proposed action will also include a proposed plan amendment to the California Desert Plan.

The Project would consist of: (1) A proposed right-of-way for the construction and operation of a six-foot diameter pipeline from Metropolitan's Iron Mountain Pumping Plant on the Colorado River Aqueduct (''CRA'') to the project proponent's property in the Cadiz/Fenner area, approximately 35 miles to the northeast; (2) pumping to lift CRA water supplies to the Cadiz/Fenner area including the possible need to modify a pump at the Iron Mountain Pumping Plant; (3) construction and operation of a series of spreading basins (approximately 200–300 acres), and (4) construction and operation of a well

field for extraction of groundwater in the Cadiz/Fenner area.

Three alternative Project configurations are being considered, along with the No Project alternative. The BLM will be asked to issue right-of-way permits for the construction of portions of the water conveyance facility and possibly other facilities which are proposed to traverse federal lands. All three alternative Project configurations involve lands currently managed by BLM.

SUPPLEMENTARY INFORMATION: The proposed project begins near the MWD Iron Mountain Pumping Plant in southeast San Bernardino County. The proposed 35-mile pipeline alignment is north to the Cadiz area. The proposed plan amendment is to allow the proposed pipeline be placed outside an utility corridor. The aquifer system (''Aquifer System'') which underlies a portion of the Project area, located in the Cadiz and Fenner valleys (''Cadiz/Fenner area'') of San Bernardino County, has been identified as a potential site for underground storage of Colorado River water. This water would be delivered to the Cadiz/Fenner area west of the Ship Mountains from the Colorado River Aqueduct (''CRA'') and by way of an underground pipeline. The stored Colorado River water would be subsequently withdrawn when needed and returned to the CRA via the pipeline to meet Metropolitan's water supply needs. In addition, indigenous groundwater in the area of the stored water would also be transferred utilizing the same facilities. The Project would have a term of 50 years. Metropolitan supplies supplemental imported water from the State Water Project and the Colorado River to its member agencies in Riverside, San Diego, San Bernardino, Orange, Los Angeles and Ventura Counties.

DATES: Written comments are requested on this notice concerning the scope of analysis of the draft EIS/EIR. Comments must be received on or before March 31, 1999. It is important that those interested in the management of the BLM properties within the Project area provide input at this time. A Notice of Availability will be published when the Draft joint EIS/EIR is available for public review.

ADDRESSES: Please submit comments concerning the scope of the analysis for the Cadiz Water Storage and Dry-Year Supply Program Pipeline in writing to Mr. James Williams, Supervisor Realty Specialist, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside. California, 92507, (909) 697–5390.

FOR FURTHER INFORMATION CONTACT: Mr. James Williams at the above address.

Dated: February 23, 1999.

Douglas A. Romoli,

Acting District Manager.

[FR Doc. 99–4924 Filed 2–26–99; 8:45 am]

BILLING CODE 4310–40–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: Tuesday, March 9, 1999, 1:00 PM (OPEN Portion), 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM, Closed portion will commence at 1:30 PM (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of December 15, 1998 Minutes (Open Portion)
3. Appointment—Jeffrey T. Griffin
4. Report on Meeting with Environmental NGOs

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Insurance project in Argentina
2. Insurance project in Argentina
3. Insurance project in Argentina
4. Finance project in Brazil and Bolivia
5. Finance project in India
6. Insurance project in Russia
7. Insurance project in Azerbaijan
8. Approval of December 15 1998 Minutes (Closed Portion)
9. Pending Major Projects

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: February 24, 1999.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 99–5127 Filed 2–25–99; 3:23 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–364 (Review)]

Aspirin from Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on aspirin from Turkey.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is April 20, 1999. Comments on the adequacy of responses may be filed with the Commission by May 13, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1987, the Department of Commerce issued an antidumping duty order on imports of aspirin from Turkey (52 FR 32030). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to this review

(1) Subject Merchandise is the class or kind of merchandise that is within the

scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Turkey.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as bulk acetylsalicylic acid (aspirin).

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of bulk acetylsalicylic acid (aspirin).

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is August 25, 1987.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 13, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have

exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority

This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: February 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–5027 Filed 2–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367–370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is April 20, 1999. Comments on the adequacy of responses may be filed with the Commission by May 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1988, the Department of Commerce issued antidumping duty orders on imports of color picture tubes from Canada, Japan, Korea, and Singapore (53 FR 429). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Canada, Japan, Korea, and Singapore.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all color picture tubes.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of color picture tubes.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is January 7, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 13, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which

your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority

These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: February 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–5025 Filed 2–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–419]

Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 22, 1999, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of VISX, Incorporated, 3400 Central Expressway, Santa Clara, California 95051. A supplement to the complaint was filed on February 9, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain excimer laser systems for vision correction surgery and components thereof by reason of infringement of claims 26 and 27 of U.S. Letters Patent 4,718,418, claim 30 of U.S. Letters Patent 4,732,148, and claims 1, 7, 10, and 12 of U.S. Letters Patent 5,711,762. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 22, 1999, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain excimer laser systems for vision correction surgery or components thereof by reason of infringement of claims 26 or 27 of U.S. Letters Patent 4,718,418, claim 30 of U.S. Letters Patent 4,732,148, or claims 1, 7, 10, or 12 of U.S. Letters Patent 5,711,762, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: VISX, Incorporated, 3400 Central Expressway, Santa Clara, California 95051.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nidek Co., Ltd., 34–14 Maehama, Hiroishi-cho, Gamagori, Aichi 443–0038, Japan.

Nidek Incorporated, 47651 Westinghouse Drive, Fremont, California 94539.

Nidek Technologies Inc., 675 South Arroyo Parkway, Suite 330, Pasadena, California 91105.

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: February 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–5001 Filed 2–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Industrial Phosphoric Acid From Israel, and Industrial Phosphoric Acid From Belgium

[Invs. Nos. 701–TA–286 (Review) and 731–TA–366 (Review), Inv. No. 731–TA–365 (Review)]

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on industrial phosphoric acid from Israel and the antidumping duty order on industrial phosphoric acid from Belgium would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is April 20, 1999. Comments on the adequacy of responses may be filed with the Commission by May 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1987, the Department of Commerce issued countervailing duty and antidumping duty orders on imports of industrial phosphoric acid from Israel (52 FR 31057). On August 20, 1987, the Department of Commerce issued an antidumping duty order on imports of industrial phosphoric acid from Belgium (52 F.R. 31439). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Israel and Belgium.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as industrial phosphoric acid.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as all producers of industrial phosphoric acid.

(5) The Order Dates are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the Order Dates are as follows:

Order date	Product/country	Investigation No.
8/19/87	Industrial phosphoric acid/Israel	701–TA–286.
8/19/87	Industrial phosphoric acid/Israel	731–TA–366.
8/20/87	Industrial phosphoric acid/Belgium	731–TA–365.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List.

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 13, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to

section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority

These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: February 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–5026 Filed 2–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–339 (Review) and 731–TA–340 (Review)]

Solid Urea From Romania Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on solid urea from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is April 20, 1999. Comments on the adequacy of responses may be filed with the Commission by May 13, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

The Department of Commerce published antidumping duty orders on solid urea from the Union of Soviet Socialist Republics (U.S.S.R.) and Romania on July 14, 1987 (52 FR 26367). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department of Commerce changed the name and case number of the original U.S.S.R. antidumping duty order into fifteen orders applicable to each independent state of the former U.S.S.R. (57 FR 28828, (June 29, 1992)). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as solid urea in any form, i.e., whether granular or prilled.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of solid urea in any form, i.e., whether granular or prilled.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is July 14, 1987.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 20, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is May 13, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand

conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority

These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: February 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–5024 Filed 2–26–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Data Relating to Beneficiary of Private Bill.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 30, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Data Relating to Beneficiary of Private Bill.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–79A. Investigations Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information is needed to report on Private Bills to Congress when requested.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100 responses at 1 Hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4882 Filed 2–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Certificates for Health Care Benefits.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 30, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Extension of currently approved collection.*

(2) Title of the Form/Collection: Certificates for Health Care Workers.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Not-for-profit institutions. The data collected in this process is used by the credentialing organization to determine if the alien is eligible to receive a certificate. The Certificate is then submitted to the INS by an alien in order to obtain an immigration benefit.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 14,000 respondents queries at approximately 1 hour and 50 minutes (1.83) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25,620 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4883 Filed 2–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Telephone Verification System (TVS) Phase II Pilot Non-Citizen Employees Employment Status Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 30, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Extension of currently approved collection.*

(2) Title of the Form/Collection: Telephone Verification System (TVS), Phase II Pilot Non-Citizen Employees Employment Status Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number. SAVE Branch, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This information will be used by the INS to determine the number of non-citizens employees who are authorized for employment in the United States as a result of the Telephone Verification System Phase II Pilot Project. The users of the Telephone Verification System are various employers throughout the United States.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 276,000 queries at approximately 7 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 32,016 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4884 Filed 2–26–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) in collaboration with the Office of Justice Programs (OJP), Corrections Program Office (CPO), announces the availability of funds in FY 1999 for a cooperative agreement to fund the ''Washington State/Local Planning for Correctional Population Management'' project.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, provide technical assistance to the jurisdictions in Washington State involved in the planning effort. No funds are transferred to state or local governments.

The Institute's Prisons Division will provide financial assistance in the form of a cooperative agreement to facilitate the policy development by state and local teams which include key decision makers and administrators like sheriffs, police chiefs, administrators in the Department of Corrections and jails, and well as the legislature. This collaboration with federal, state and local participation will address the effective allocation of resources for managing offenders in prisons, jails and community option programs to increase the availability of secure prison beds for the persistent/violent offender.

Background

Request for Funding and Technical Assistance

The request for funding and technical assistance was submitted jointly by the Washington State Department of Corrections and the Washington Association of Sheriffs & Police Chiefs. It proposed utilizing collaborative efforts to develop more effective supervision and housing of violent offenders.

This project is being addressed through a partnership between local and state correctional agencies to evaluate the risks and needs of the offenders under correctional control of the State of Washington utilizing validated risk instruments by both jail and prison facilities so that policy decision-makers can be informed of the use of public resources. The proposal includes the development of a data information infrastructure that can integrate both county and state corrections information on offender risks that would result in a statewide profile of offenders, facilities and programs.

This collaborative approach could become a model for other states and jurisdictions. It involves a number of agencies at the federal, state and local levels.

The funding will address:

- Risk assessment in support of managing bed space for violent/persistent offenders;
- Community-based intermediate sanctions for non-violent offenders at the local and state level of government (county and state corrections); and
- Development of an information infrastructure to support these activities.

Desired Outcomes

- Statewide implementation of an objective jail classification system;
- Future housing needs based on risk/risk impact formulas/cost per offender;
- Future correctional option needs based on risk projections;
- Future data network/software needs;
- Fiscal analysis of future legislative requests or legislative proposals with bed impact analysis information; and
- Statewide capacity guidelines.

Components of the Project

- Offender risk/needs assessment
- Capacity/facility/correctional options assessments
- Information system evaluation and recommendations
- Projection of future housing needs and legislative impacts.

Related Activities

In addition to the cooperative agreement, a series of 7 or 8 technical assistance events are being coordinated by NIC in collaboration with the CPO to develop information that is necessary to contribute to the work funded under the cooperative agreement.

Purpose: The National Institute of Corrections is seeking applications for a cooperative agreement to do the project management to assist selected subject matter experts and the correctional planning team from the Washington State Department of Corrections, Washington Association of Sheriffs and Police Chiefs, and the Washington State Justice Information Network to develop and implement purposeful, informed policies and standards to effectively manage the correctional offender population. The Washington State/Local Planning for Correctional Population Management will be a collaborative effort between NIC and CPO program staff and the cooperative agreement recipient.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $200,000 (direct and indirect costs) and project activity must be completed within 18 months of the date of the award.

Funds may only be used for the activities that are linked to the desired outcomes of the project. This project will be a collaborative venture with the NIC Prisons Division.

Deadline for Receipt of Applications: Applications must be received at National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534, Attention: Administrative Officer, by 4:00 p.m., Eastern time, Friday, April 9, 1999.

Addresses and Further Information: Requests for the application kit, which includes further details on the project's objectives should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and/or programmatic questions concerning this announcement should be directed to Sammie D. Brown at the above address or by calling (800) 995–6423, or (202) 307–3106, extension 126, or by E-mail via *sbrown@bop.gov*.

Eligible Applicants: An eligible applicant is any private or non-profit organization, institution, or individual.

Review Considerations: Applications received under this announcement will be subjected to an NIC/CPO 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 99P11. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603.

Larry Solomon,

Acting Director, National Institute of Corrections.

[FR Doc. 99–4866 Filed 2–26–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,619]

Coastal Management Corporation, Bryan, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 8, 1999, in response to a worker petition dated January 27, 1999, filed on behalf of workers at Coastal Management Corporation (TA–W–35,619).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification issued for all workers of Schlumberger Oilfield Services, also known as Dowell Schlumberger and also known as Anadrill Schlumberger operating at various locations in the State of Texas (TA–W–35,463A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of February 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–4867 Filed 2–26–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–22]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information regarding occupational injuries and illnesses has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Joseph J. DuBois, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–1702.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 1998 (63 FR 27596–27597), the Agency announced its intent to request an extension of approval for the OSHA Data Collection System. This data collection will request occupational injury and illness data and employment and hours worked data from selected employers in the following Standard Industrial Classifications (SICs):

20–39 Manufacturing
0211 Beef Cattle Feedlots
0212 Beef Cattle, Except Feedlots
0213 Hogs
0214 Sheep and Goats
0219 General Livestock, Except Dairy and Poultry
0241 Dairy Farms
0251 Broiler, Fryer, and Roaster Chickens
0252 Chicken Eggs
0253 Turkeys and Turkey Eggs
0254 Poultry Hatcheries
0259 Poultry and Eggs, NEC
0291 General Farms, Primarily Livestock and Animal Specialties
0782 Lawn and Garden Services (North Carolina only)
0783 Ornamental Shrub and Tree Services
1711 Plumbing, Heating and Air-Conditioning (California only)
1761 Roofing, Siding, and Sheet Metal Work (California only)
4212 Local Trucking Without Storage
4213 Trucking, Except Local
4214 Local Trucking With Storage
4215 Courier Services, Except Air
4221 Farm Product Warehousing and Storage
4222 Refrigerated Warehousing and Storage
4225 General Warehousing and Storage
4226 Special Warehousing and Storage, NEC
4231 Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation
4491 Marine Cargo Handling
4492 Towing and Tugboat Services
4493 Marinas
4499 Water Transportation Services, NEC
4512 Air Transportation, Scheduled
4513 Air Courier Services
4581 Airports, Flying Fields, & Airport Terminal Services
4783 Packing and Crating
4952 Sewerage Systems (California only)
4953 Refuse Systems
4959 Sanitary Services, NEC (California only)
5012 Automobiles and Other Motor Vehicles
5013 Motor Vehicle Supplies and New Parts
5014 Tires and Tubes
5015 Motor Vehicle Parts, Used
5031 Lumber, Plywood, Millwork, and Wood Panels
5032 Brick, Stone, and Related Construction Materials
5033 Roofing, Siding and Insulation Materials
5039 Construction Materials, NEC
5051 Metal Service Centers and Offices
5052 Coal and Other Minerals and Ores
5093 Scrap and Waste Materials
5141 Groceries, General Line
5142 Packaged Frozen Food Products
5143 Dairy Products, Except Dried or Canned
5144 Poultry and Poultry Products
5145 Confectionery
5146 Fish and Seafoods
5147 Meats and Meat Products
5148 Fresh Fruits and Vegetables
5149 Groceries and Related Products, NEC
5181 Beer and Ale
5182 Wine and Distilled Alcoholic Beverages
5211 Lumber and Other Building Materials Dealers
5311 Department Stores (Pilot collection)
5411 Grocery Stores (Maryland only)
8051 Skilled Nursing Care Facilities
8052 Intermediate Care Facilities
8059 Nuring and Personal Care Facilities, NEC
8062 General Medical and Surgical Hospitals (Pilot collection)
8063 Psychiatric Hospitals (Pilot collection)
8069 Speciality Hospitals, Except Psychiatric (Pilot collection)

In addition, OSHA will collect data from establishments that were inspected during Fiscal year 1998 (October 1, 1997 through September 30, 1998) that are required to maintain the OSHA Log. Information will also be collected from Public Sector establishments in certain State Plan States.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0209. The approval expires 01/31/2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: February 19, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–4868 Filed 2–26–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Temporary Closing of Reference Service on Certain Textual Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of schedule of closure and reopening of reference services for certain textual records holdings in the National Archives of the United States being relocated from the National Archives Building to the National Archives at College Park.

This notice provides information about the period of time that reference service on certain textual records holdings of the National Archives will be unavailable due to the move of those holdings from their current locations in the National Archives Building in Washington, DC, to new locations in the National Archives at College Park, Maryland. Records are being relocated from the downtown facility to the College Park facility to permit the demolition of Tiers 1–6 of the National Archives Building, as part of a larger renovation project to enhance protection of the Charters of Freedom, improve public and research services, and make the building compliant with the Americans With Disabilities Act.

During the periods shown for the record groups listed on the schedule at the end of this notice, NARA will be unable to provide records for research, or process requests for reproductions (fee orders) or requests for information from these records. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for reopening the records for reference service.

For schedule updates and information on the new location of the records, call: Access Programs (Richard Crawford) at (301) 713–7149, or e-mail: inquire@arch2.nara.gov.

Dated: February 22, 1999.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

Current cluster(s)	Record group	Record group title	Close	Reopen	New cluster(s)
American Indian	217	Records of Accounting Officers of the Department of the Treasury.	7/6/99	11/9/99	Treasury.
Genealogical Miscellaneous Old Army Defense	225	Records of Joint Army and Navy Boards and Committees.	10/21/99	11/23/99	Defense.
Donated Materials	200	National Archives Collection of Donated Historical Materials.	10/29/99	12/2/99	Donated Materials.
Genealogical	117	Records of the American Battle Monuments Commission.	10/21/99	11/26/99	Modern Army.
	147	Records of the Selective Service System, 1940–	10/25/99	12/2/99	
	163	Records of the Selective Service System (World War I).	10/29/99	12/2/99	
Legislative	144	Records of the Temporary National Economic Committee.	6/7/99	7/8/99	Legislative at College Park.
	148	Records of Exposition, Anniversary, and Memorial Commissions.	6/7/99	7/12/99	
	149	Records of the Government Printing Office	6/8/99	7/12/99	
	287	Publications of the U.S. Government	6/8/99	10/8/99	
	411	Records of the General Accounting Office	9/8/99	11/23/99	
New Deal	9	Records of the National Recovery Administration	5/6/99	6/24/99	New Deal.
	20	Records of the Office of the Special Advisor to the President on Foreign Trade.	5/24/99	6/24/99	
	35	Records of the Civilian Conservation Corps	5/24/99	6/28/99	
	68	Records of the U.S. Coal Commission	5/26/99	6/28/99	
	69	Records of the Work Projects Administration	5/26/99	7/19/99	
	73	Records of the President's Organization on Unemployment Relief.	6/16/99	7/19/99	
	89	Records of the Federal Fuel Distributor	6/16/99	7/19/99	
	119	Records of the National Youth Administration	6/16/99	7/21/99	
	133	Records of the Federal Coordinator of Tranportation.	6/18/99	7/23/99	
	135	Records of the Public Works Administration	6/22/99	7/27/99	
	150	Records of the National Bituminous Coal Commission, 1935–36.	6/24/99	7/27/99	
	162	Records of the Federal Works Agency	6/24/99	7/27/99	
	222	Records of the Bituminous Coal Division	6/24/99	8/2/99	
	223	Records of the Bituminous Coal Consumers' Counsel.	6/30/99	8/4/99	
Old Army	18	Records of the Army Air Forces	4/8/99	5/18/99	Air Force.
	77	Records of the Office of the Chief of Engineers	6/30/99	8/16/99	Modern Army.
	92	Records of the Office of the Quartermaster General.	7/15/99	9/20/99	
	99	Records of the Office of the Paymaster General	4/16/99	5/18/99	Old Army at College Park.
	107	Records of the Office of the Secretary War	6/3/99	7/6/99	Modern Army.
	111	Records of the Chief Signal Officer	5/11/99	6/15/99	
	112	Records of the Office of the Surgeon General (Army).	6/18/99	7/29/99	
	120	Records of the American Expeditionary Forces (World War I).	5/10/99	7/21/99	
	153	Records of the Office of the Judge Advocate General (Army).	5/13/99	7/1/99	
	156	Records of the Office of the Chief of Ordnance	4/16/99	6/4/99	
	159	Records of the Office of the Inspector General (Army).	4/9/99	5/11/99	
	165	Records of the War Department General and Special Staffs.	7/15/99	10/6/99	Old Army at College Park Modern Army.
	168	Records of the National Guard Bureau	9/24/99	10/28/99	Modern Army.
	175	Records of the Chemical Warfare Service	6/28/99	8/2/99	
	177	Records of the Chiefs of Arms	6/3/99	6/4/99	Old Army at College Park Modern Army.
	191	Records of the War Department Claims Board	4/9/99	5/13/99	Modern Army.
	192	Records of the Office of the Commissary General of Subsistence.	5/4/99	6/8/99	Old Army at College Park.
	203	Records of the Office of the Chief of Finance (Army).	5/6/99	6/10/99	Modern Army.
	213	Records of the Foreign Claims Section (War)	9/24/99	10/27/99	
	247	Records of the Office of the Chief of Chaplains	9/24/99	10/27/99	
	391	Records of U.S. Army Mobile Units, 1821–1920	4/13/99	5/26/99	
	394	Records of U.S. Army Continental Commands, 1920–1942.	4/27/99	6/11/99	
	395	Records of U.S. Army Overseas Operations and Commands.	5/11/99	6/11/99	

Current cluster(s)	Record group	Record group title	Close	Reopen	New cluster(s)
	407	Records of the Office of the Adjutant General, 1917–.	9/3/99	10/27/99	
World War I Emergency Agencies.	1	Records of the War Labor Policies Board	4/8/99	5/10/99	World War I Emergency Agencies.
	2	Records of the National War Labor Board (World War 1).	4/8/99	5/10/99	
	3	Records of the U.S. Housing Corporation	4/8/99	5/10/99	
	4	Records of the U.S. Food Corporation	4/8/99	5/10/99	
	5	Records of the U.S. Grain Corporation	4/14/99	5/18/99	
	6	Records of the U.S. Sugar Equalization Board, Inc.	4/16/99	5/18/99	
	14	Records of the U.S. Railroad Administration	4/16/99	5/20/99	
	61	Records of the War Industries Board	4/20/99	5/24/99	
	62	Records of the Council of National Defense	4/22/99	5/26/99	
	63	Records of the Committee on Public Information	4/26/99	5/26/99	
	67	Records of the U.S. Fuel Administration	4/26/99	5/28/99	
	113	Records of the Allied Purchasing Commission	4/28/99	5/28/99	
	154	Records of the War Finance Corporation	4/28/99	6/2/99	
	158	Records of the Capital Issues Committee	4/30/99	6/2/99	
	182	Records of the War Trade Board	4/30/99	6/4/99	
	190	Records of the Bureau of War Risk Litigation	5/4/99	6/4/99	
	194	Records of the War Minerals Relief Commission	5/4/99	6/8/99	

[FR Doc. 99–4930 Filed 2–26–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of Public Meeting.

SUMMARY: At its eleventh regular meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will conduct its normal meeting business; hear possible presentations from one or more subcommittees; and continue its ongoing review of Commission research on economic and social gambling impacts and recommendations for the final report.

DATES: Thursday, March 18, 8:30 a.m. to 5:30 p.m. and Friday, March 19, 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting site will be located in the Washington Metropolitan Area. Site location will be announced in the **Federal Register** and on our WEB site (www.ngisc.gov) once determined.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days.

CONTACT PERSONS: For further information contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: The meeting agenda will include normal meeting business and an ongoing review of Commission research on economic and social gambling impacts and recommendations for the final report. In addition, the Commission will hear from one or more subcommittees on possible findings and recommendations. Individual subcommittee meetings will be held March 17–19. For more information on individual subcommittee meetings, please contact Mr. Craig Stevens at the Commission for meeting times and locations.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 99–5029 Filed 2–26–99; 8:45 am]

BILLING CODE 6802–ET–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Grant/Cooperative Agreement Provisions.

2. Current OMB approval number: 3150–0107.

3. How often the collection is required: On occasion, one time.

4. Who is required or asked to report: Recipients of NRC grants or cooperative agreements.

5. The number of annual respondents: 90.

6. The number of hours needed annually to complete the requirement or request: 1068.5.

7. Abstract: The Division of Contracts and Property Management uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

Submit by April 30, 1999 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (lower level), Washington DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/

index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 17th day of February, 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–4938 Filed 2–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to the Wolf Creek Nuclear Operating Corporation (WCNOC or the licensee), for operation of the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas.

The initial Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing was published in the **Federal Register** on October 5, 1998 (63 FR 53471). The information included in the supplemental letters indicates that the original notice, that included fourteen proposed beyond-scope issues (BSIs) to the Improved Technical Specifications (ITS) conversion, needs to be expanded to add an additional BSI that was not included in the second notice. This results in a total of twenty-three BSIs.

The proposed amendment, requested by the licensee in a letter dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, September 24, October 16, October 23, November 24, December 2, December 17, December 21, 1998 and February 4, 1999, would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for WCGS. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 323); TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); and Union Electric Company for Callaway Plant (Docket No. 50–483). It is a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in the CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensee does not indicate or describe the change to the CTS.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases, for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table connecting each CTS specification (i.e., limiting condition for operation, required action, or surveillance requirement) to the associated ITS specification, sorted by both CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG–1431 specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents. There will be a license condition to require the licensee to implement the relocations as described in its letters.

The licensee's application of the screening criteria is described in Attachment 2 to its June 2, 1997, submittal, which is entitled, ''General Description and Assessment.'' The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the updated safety analysis report (USAR), the ITS BASES, the Technical Requirements Manual (TRM) incorporated by reference in the USAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event. Some of these changes will revise or add new surveillance requirements (SRs) compared to the SRs in the CTS. There may be scheduling issues with performance of these new or revised SRs. There will be a license condition to define the schedule to begin performing these SRs.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different than the requirements in both the CTS and the improved Standard Technical Specifications (NUREG–1431). The twenty-two BSIs listed in the second notice still apply to the conversion, however there is an additional BSI. The additional beyond-scope issues (BSIs) were discussed in the licensee's response to requests for additional information (RAIs) from the NRC staff. The additional beyond-scope issue that was omitted from the second notice is as follows:

23. Change 14–09–M (ITS 3/4.7), question Q3.7.16–3, response letter dated February 4, 1999. A new LCO, with actions and surveillance requirements from the ISTS is proposed for the allowable fuel storage pool boron concentration. The BSI for this change is the addition of a new minimum boron concentration value and a revision to the ISTS actions to reflect additional regions of fuel storage based on NRC approval of reracking the spent fuel pool prior to the issuance of the ITS.

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.

By March 31, 1999, 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 rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621. 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 a 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.

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 Mr. Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 15, 1997, as supplemented by letters dated June 30, August 5, August 28, September 24, October 16, October 23, November 24, December 2, December 17, December 21, 1998, and February 4, 1999, 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 rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 25th day of February 1999.

For the Nuclear Reguatory Commission.

Mel Gray,

Project Manager, Project Directorate IV–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–5076 Filed 2–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 107th meeting on March 16–18, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, March 16, 1999—8:30 A.M. until 6:00 P.M.

Wednesday, March 17, 1999—8:30 A.M. until 6:00 P.M.

Thursday, March 18, 1999—8:30 A.M. until 4:00 P.M.

The following topics will be discussed:

A. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: an ACNW self-assessment, DOE's Viability Assessment, NRC supported Waste Related Research, a White Paper on Repository Design Issues at Yucca Mountain, and other topics discussed during this and previous meetings as the need arises.

B. *Meeting with the NRC Commissioners, Commissioners' Conference Room, One White Flint North, March 17, 1999, 9:00 a.m. to 11:30 a.m.*—The Committee will continue preparations for its public meeting with the Commission. The Viability Assessment of a Repository at Yucca Mountain will be the topic of discussion.

C. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

D. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting

has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Video teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: February 23, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–4937 Filed 2–26–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Implementation of the Federal Activities Inventory Reform Act of 1998, (Public Law 105–270) (''The FAIR Act'')

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed Guidance on the Implementation of the FAIR Act Through Revisions to the Supplemental Handbook to OMB Circular A–76.

SUMMARY: The Office of Management and Budget (OMB) requests agency and public comments on its proposed guidance to implement the recently-enacted ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (the ''FAIR Act''). The FAIR Act directs agencies to develop inventories of their commercial activities and to conduct cost comparisons to determine whether a commercial activity that is performed by a governmental source should instead be performed by a private-sector source. The FAIR Act requires that Federal agencies must submit to OMB, each fiscal year, a list of all their activities that are not inherently governmental (''commercial activities'') and that are performed by Federal employees, with their associated Full-Time-Equivalents (FTE). (FAIR Act, Section 2(a)). OMB will review each agency's list for the fiscal year and consult with the agency regarding its content. (FAIR Act, Section 2(b)). Upon the completion of this review and consultation, the agency must transmit a copy of the list to Congress and make the list available to the public. (FAIR Act, Section 2(c)). An interested party, as defined by FAIR, may then challenge the omission or inclusion of a particular activity on the list (FAIR Act, Section 3) and the agency must then notify Congress of any changes to the list that result from this process and make the changes available to the public. (FAIR Act, Section 2(c)(2)). Finally, the Fair Act requires agencies, within a reasonable time after making final decisions to include or exclude activities on the list, to review the activities on the list for possible performance by the private sector. When an agency considers contracting with a private-sector source for the performance of a commercial activity, the agency must use a competitive process to select the source (except as may otherwise be provided in a law, Executive order, regulation, or executive branch circular), in accordance with OMB guidance. In conducting cost comparisons, agencies must ensure that all costs are considered (including certain specified costs) and that these costs are realistic and fair. (FAIR Act, Section 2(d)–(e))

In complying with the FAIR Act, agencies will implement the OMB Circular A–76, ''Performance of Commercial Activities,'' which establishes Federal policy for the performance of recurring commercial activities. The Circular distinguishes between those agency activities that are commercial in nature and those that are inherently governmental. *See* Circular A–76, Sections 6a and 6e (definitions of ''commercial activity'' and ''governmental function''); Office of Federal Procurement Policy Letter 92–1, ''Inherently Governmental Functions,'' 57 FR 45096 (September 30, 1992). Guidance for implementing the Circular's general policies is contained in a Supplemental Handbook for Circular A–76, which OMB revised in 1996. *See* 61 FR 14338 (April 1, 1996). Under the Circular and its Supplemental Handbook, agencies must develop and maintain annual inventories of their commercial activities. When deciding whether to have an activity performed by a governmental or private-sector source, agencies must also conduct cost comparisons according to specified criteria and procedures. The proposed revisions to the Handbook would inform agencies of the Act's requirements and conform the Handbook to those requirements. The revisions also would revise the Handbook to clarify that agencies must rely on the Handbook's guidance with respect to the cost-comparison competition requirements of the FAIR Act. These requirements establish a competitive source-selection process which compares costs in a complete, fair, and reasonable manner.

DATES: Written comments on the proposed revisions must be filed on or before April 15, 1999 to be considered.

ADDRESSES: Address all comments to the Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, FAX Number (202) 395–7230.

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, (202) 395–6104.

Availability: Copies of the FAIR Act, the current OMB Circular A–76 and its Supplemental Handbook may be obtained by contacting the Executive Office of the President, Office of Administration, Publications Office, Washington, DC 20503, at (202) 395–7332. These documents are also accessible on the OMB Home page. The online OMB Home page address (URL) is *http:/www.whitehouse.gov/WH/EOP/omb*.

SUPPLEMENTARY INFORMATION: On October 12, 1998, President Clinton signed into law the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (the ''FAIR Act''). The FAIR Act directs agencies to develop inventories of their commercial activities and to conduct cost comparisons to determine whether a commercial activity that is performed by a governmental source should instead be performed by a private-sector source.

To facilitate agency implementation of the FAIR Act, OMB proposes to revise the Supplemental Handbook (particularly Appendix 2, which addresses the commercial-activity inventory). These proposed revisions would inform agencies of the FAIR Act's requirements and, to avoid duplication, conform Handbook provisions so that they cross-reference and parallel relevant FAIR Act provisions. The changes would incorporate the statutory deadline of June 30th for agency submissions to OMB of annual commercial-activity inventories and

would add two data elements to the inventory's description of each activity.

Under the FAIR Act, when an agency considers contracting with a private-sector source for the performance of an activity on the inventory, it must use a competitive process to select the source and must ensure that all costs are considered (including certain specified costs) and that the costs considered are realistic and fair. *See* FAIR Act, Section 2(d)–(e). This proposal would revise the Supplemental Handbook (in Part I, Chapter 1, Paragraph A, and in Part II, Chapter 1, Paragraph A) to clarify that agencies conducting such cost-comparisons must rely on the guidance in Circular A–76 and the Supplemental Handbook. They require that all competitive costs of in-house and contract performance be included in the cost comparison, including all costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits, and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance. Since the Supplemental Handbook's guidance on cost comparisons has been recently revised and is fully consistent with the FAIR Act, OMB does not propose to revise that guidance at this time.

OMB requests comments on its proposed guidance for implementing the FAIR Act through revisions to the Supplemental Handbook for Circular A–76.

G. Edward DeSeve,

Deputy Director for Management.

To implement the FAIR Act, OMB proposes to make the following revisions to the Supplemental Handbook for OMB Circular A–76:

1. Part I, Chapter 1, Paragraph A of the Supplemental Handbook (p. 3) is revised by adding a reference to the FAIR Act in the first sentence. As revised, Paragraph A would read as follows:

A. General

''This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial supporting activities, implementing the ''Federal Activities Inventory Reform Act of 1998'' (FAIR Act, Pub. L. 105–270) and Circular A–76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or interservice support agreement (ISSA) performance.

2. Part II, Chapter 1, Paragraph A.1 of the Supplemental Handbook (p. 17) is revised by adding a reference to the FAIR Act in the first sentence. No revisions are proposed to Paragraph A.2–4. As revised, Paragraph A.1 would read as follows:

1. Part II provides generic and streamlined cost comparison guidance to comply with the provisions of the ''Federal Activities Inventory Reform Act of 1998'' (Pub. L. 105–270) (the ''FAIR Act''), Circular A–76 and this Supplement. This includes guidance for developing in-house costs based upon the Government's Most Efficient Organization (MEO) and other adjustments to the contract and interservice support agreement (ISSA) price. It also sets out the principles for development of cost-based performance standards or other measures that are comparable to those used by commercial sources. Appendices 6 and 7 provide sector-specific cost comparison guidance.

3. The title of Appendix 2 of the Supplemental Handbook (p. 38) is revised from ''OMB Circular No. A–76 Inventory'' to ''Commercial Activity Inventory''. This inventory is now required by the FAIR Act as well as by Circular A–76.

4. Paragraph A of Appendix 2 of the Supplemental Handbook (p. 38) is revised in several ways. The introductory sentences now refer to the FAIR Act's requirements and incorporate its due date (June 30th) for submission to OMB of an agency's commercial-activity inventory. Two data elements are added to the inventory's description of an activity. These additional data elements (k and l, below) correspond to the data elements required under Section 2(a)(1) and (3) of the FAIR Act (the Handbook already requests the full-time employee data under Section 2(a)(2)). In addition, the existing data element for ''Location/organization unit'' is being separated out into two elements (''Location'' and ''Organization Unit''). Finally, a concluding sentence is added to clarify that agencies have the flexibility to automate and structure the inventory so long as all data elements are included. As revised, Paragraph A would read as follows:

A. Preface

''Agencies must implement and manage cost comparisons in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Pub. L. 105–270) (the ''FAIR Act''), Circular A–76 and this Supplement. In this regard, by June 30 of each year, each agency must submit to OMB a report that contains an inventory of the agency's commercial activities. These reports must identify those commercial activities that are exempt from cost comparison requirements and must describe the status of activities that are subject to cost comparison. Each agency must maintain an annual inventory of all commercial activities performed by in-house FTE, including, at a minimum, the following data elements:

a. State.
b. Location.
c. Organization unit.
d. FTE.
e. Activity function code.
f. Reason code.
g. Year of cost comparison or conversion.
h. CIV/FTE savings.
I. Annual dollar savings.
j. Date of completed Post-MEO Performance Review.
k. Year the activity first appeared on the agency inventory, under FAIR.
l. Name of a Federal employee responsible for the activity from whom additional information about the activity may be obtained.

Agencies have the discretion to automate and to structure this detailed inventory as they believe most appropriate, so long as the inventory includes each of these data elements.

5. Appendix 2 of the Supplemental Handbook (p. 38) is revised by adding two new paragraphs that reflect the requirements of the FAIR Act. New Paragraph G describes the review and publication of the agency commercial-activity inventories and the challenge-and-appeals process pertaining to their development. New Paragraph H requires agencies to review the activities on their inventories of commercial activities and to use a competitive process, with established cost comparison procedures, when the agency considers contracting with a private-sector source for the performance of an activity on the inventory. The new Paragraphs G and H would read as follows:

G. FAIR Act Review and Publication of Inventories; Challenges and Appeals Regarding Such Inventories

In accordance with Section 2 of the FAIR Act, OMB will review the agency's inventory of commercial activities and consult with the agency regarding its content. (Section 4 of the FAIR Act specifies the agencies that are subject to the Act, and exceptions from the Act's coverage.) Upon completion of this review and consultation, the agency must transmit a copy of the inventory to Congress and make the inventory available to the public. OMB will publish a notice in the **Federal Register** that the inventories are available to the public.

Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the inventory is subject to administrative challenge and appeal by an ''interested party.'' Section 3(b) of the FAIR Act defines ''interested party'' as:

1. A private sector source that (A) is an actual or prospective offeror for any contract or other form of agreement to perform the activity; and (B) has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

2. A representative of any business or professional association that includes within its membership private sector sources referred to in 1. above.

3. An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

4. The head of any labor organization referred to in section 7103(a) (4) of title, 5 United States Code, that includes within its membership officers or employees of an organization referred to in 3. above.

An interested party may submit an initial challenge, to the inclusion or exclusion of an activity, within 30 calendar days after publication of the notice of availability in the **Federal Register**. The challenge must set forth the reasons for the interested party's belief that the particular activity should be reclassified as inherently governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory), in accordance with OFPP Policy Letter 92–1 (see Appendix 5). Each agency must designate the agency official who has the responsibility for receiving and deciding such challenges (that official may be the official identified in paragraph 9.a of the Circular, or that official's designee). The deciding official must decide the initial challenge and transmit to the interested party a written notification of the decision within 28 calendar days of receiving the challenge. The notification must include a discussion of the rationale for the decision and, if the decision is adverse, an explanation of the party's right to file an appeal. An interested party may appeal an adverse decision to the head of the agency within 10 working days after receiving the written notification of the decision. Within 10 working days of receipt of the appeal, the agency head must decide the appeal and transmit to the interested party a written notification of the decision together with a discussion of the rationale for the decision.

H. FAIR Act Competitions

Section 2(d) of the FAIR Act requires each agency, within a reasonable time after the publication of its commercial-activity inventory, to review the activities on the inventory. In addition, Section 2(d)-(e) of the FAIR Act provides that, when an agency considers contracting with a private-sector source for the performance of an activity on the inventory, the agency must use a competitive process to select the source and must ensure that, for the comparison of costs, all costs are considered (including certain specified costs) and the costs considered are realistic and fair. In carrying out these requirements, agencies must rely on the guidance contained in Circular A–76 and this Supplemental Handbook. All competitive costs of in-house and contract performance are included in the cost comparison, including the costs of quality assurance, technical monitoring, liability insurance, retirement benefits, disability benefits and overhead that may be allocated to the function under study or may otherwise be expected to change as a result of changing the method of performance.

[FR Doc. 99–5112 Filed 2–26–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (HEICO Corporation, Common Stock, $0.01, Par Value and Class A Common Stock, $0.01 Par Value) File No. 1–4604

February 23, 1999.

HEICO Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors of the Company unanimously approved a resolution on January 15, 1999 to withdraw the Company's Securities from listing on the Amex.

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Company has complied with the rules of the Amex by notifying Amex of its intention to withdraw its Securities from listing on the Amex by letter dated January 25, 1999. Amex replied by letter dated January 26, 1999, advising the Company that they would not interpose any objection to the withdrawal of the Company's Securities from listing on the Amex.

On January 29, 1999, the Company's Securities began trading on the New York Stock Exchange,Inc. (''NYSE'').

The Company's application relates solely to the withdrawal from listing of the Company's Securities from the Amex and shall have no effect upon the continued listing of the Securities on the NYSE. By reason of section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before, March 16, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 5th Street, NW, Wasington DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission or the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4963 Filed 2–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41080; File No. SR–CBOE–99–01]

Self-Regulatory Organizations; Notice of Filings and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Arbitration Jurisdiction

February 22, 1999.

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 January 11, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 adopt new Interpretation .03 under Exchange Rule 18.1, ''Matters Subject to Arbitration,'' to clarify that a claim involving employment discrimination, including sexual harassment, is not appropriate for arbitration at the Exchange. The text of the proposed rule change follows; additions are italicized.

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Chapter XVIII

Arbitration

Matters Subject to Arbitration

Rule 18.1. No Change.

* * * Interpretations and Policies:

.03 (a) For the purposes of Rule 18.1(a), the term ''Exchange business''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment.

(b) Notwithstanding the policy set forth in paragraph (a), the Exchange may makes its arbitration facilities available for the resolution of employment discrimination, including sexual harassment, claims if the parties mutually agree to arbitrate the claim after the claim has arisen. Any determination pursuant to this paragraph will be made by the Director of Arbitration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The purpose of the proposed rule change is to adopt new Interpretation .03 under Exchange Rule 18.1 to clarify that a claim involving employment discrimination, including sexual harassment, is not appropriate for mandatory arbitration at the Exchange. Exchange Rule 18.1 sets forth the authority of the Exchange to compel members and persons associated with members to arbitrate a dispute, claim or controversy under Exchange rules. Generally, Exchange Rule 18.1requires members and associated persons to submit to arbitration if a properly filed claim ''arises out of Exchange business'' and is accepted for arbitration by the Director of Arbitration.[3]

Due to the controversy surrounding the arbitration of employment discrimination claims pursuant to mandatory pre-dispute agreements, the Exchange believes it is appropriate to adopt this Interpretation to make it clear on the face of the rules that such claims are not deemed to be encompassed by the term ''Exchange business.'' Inasmuch as discrimination claims have not been administered by the Exchange in the past, this clarification is preemptive, *i.e.*, designed to forestall a waste of resources caused by a party inappropriately filing an employment discrimination claim with the Exchange.

Since 1991, when the United States Supreme Court decided in *Gilmer* v. *Interstate/Johnson Lane Corp.*[4] *That a registered representative could be compelled to arbitrate an age discrimination claim, the arbitration fora sponsored by other self-regulatory organizations (''SROs''), such as the National Association of Securities Dealers (''NASD'') and the New York Stock Exchange (''NYSE''), have administered arbitration claims asserting employment discrimination. Such claims have been compelled to arbitration pursuant to an associated person's agreement on Form U–4 to arbitrate any dispute that is required to be arbitrated under the rules of an SRO with which he/she is registered and pursuant to specific SRO rules requiring arbitration of claims arising out of employment.*[5]

In response to controversy over the mandatory arbitration of employment discrimination disputes in the securities industry pursuant to Form U–4 and SRO rules, some SROs are amending their rules to eliminate mandatory arbitration of these disputes pursuant to SRO rules. The NASD amendment, which became effective January 1, 1999, no longer requires associated persons, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination.[6] Discrimination claims may be compelled to arbitration before the NASD pursuant to a private arbitration agreement entered into between the parties either before or after the dispute arose. In addition, the NYSE amended its rules to remove mandatory arbitration of statutory employment discrimination claims from its rules.[7] Under the NYSE amendment, also effective on January 1, 1999, such claims may be arbitrated only pursuant to a post-dispute agreement to arbitrate.

CBOE rules, however, are silent with respect to employment related disputes. Prior to 1980, Exchange Rule 18.1 contained a provision requiring members and their employees to submit employment related disputes to arbitration upon the demand of any party. SR–CBOE–80–2 deleted this provision.[8] Today, all claims filed by members and associated persons are subject to the ''Exchange business'' criteria. Although CBOE rules do not define ''Exchange business,'' the resolution of claims alleging employment discrimination or sexual harassment clearly do not fall within the plain meaning or intent of CBOE's mandatory pre-dispute arbitration requirements.[9] CBOE believes this interpretation is consistent with the decision of the U.S. Court of Appeals for the Seventh Circuit in *Ferrand* versus *Lutheran Bhd.*[10] which, prior to the specific inclusion of employment disputes in the NASD's arbitral jurisdictional rules, held that a registered representative could not be required under NASD rules to arbitrate a claim arising under the Age Discrimination in Employment Act. CBOE believes that its interpretation that Exchange Rule 18.1 does not mandate arbitration of employment discrimination or sexual harassment claims is also consistent with the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *Duffield* versus *Robertson Stephens & Co.*[11] which held that ''employees may not be required, as a condition of employment, to waive their right to bring future Title VII claims in court.''

Although proposed Interpretation .03 to Exchange rules 18.1 codifies the Exchange's current policy that the term ''Exchange business'' does not include employment discrimination, including sexual harassment, the interpretation does not exclude all employment related disputes. Certain employment related claims (such as those involving

[3] Procedures for challenging the appropriateness of submitting a matter to arbitration and for review by the Board of Directors of Arbitration's decision to accept a matter for arbitration are contained in paragraph (c) of Exchange Rule 18.1.

[4] 500 U.S. 20 (1991).

[5] *See* NYSE Rule 347 and NASD Rule 10201.

[6] Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998).

[7] Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999). The Commission also recently approved a proposal by the Boston Stock Exchange, Inc. amending it arbitration rules to remove mandatory arbitration of statutory employment discrimination claims absent a post-claim arbitration agreement. Exchange Act Release No. 40861 (December 29, 1998) 64 FR 1039 (January 7. 1999).

[8] Exchange Act Release No. 16606 (February 25, 1980) 45 FR 13856 (March 3, 1980).

[9] *See* letter from Alger B. Chapman, Chairman, CBOE, dated October 3, 1994, to Brandon Becker, Director, Division of Market Regulation, Commission. Mr. Chapman's letter responds to a request to comment on the issues underlying the General Accounting Office report entitled ''Employment Discrimination: How Registered Representative Fare in Discrimination Disputes'' (March 30, 1994) and Congressional concern over the mandatory arbitration of claims under the anti-discrimination laws.

[10] 993 F.2d 1253 (7th Cir. 1993). The Court distinguished *Ferrant* from *Gilmer* (which required arbitration of an age discrimination claim before the NYSE) because the NASD rules did not specifically require the arbitration of ''employment'' related disputes.

[11] 144 F.3d 1182, 1190 (9th Cir. 1998).

compensation based upon Exchange transactions or breach of contract claims with a nexus to Exchange business) may be appropriate for arbitration at the Exchange. Furthermore, Exchange Rule 181.(c) provides a mechanism for parties to challenge the appropriateness of submitting a claim to arbitration.

In deference to the federal policy favoring alternate dispute resolution and to accommodate those members and associated persons who may choose to resolve a discrimination claim through arbitration, proposed paragraph (b) of Interpretation .03 under Exchange Rule 18.1 provides that the Exchange may make its arbitration facilities available for the resolution of such claims if the parties mutually agree to arbitrate the claim after the claim has arisen. As with all claims filed with the CBOE, a decision to allow a discrimination claim to proceed under Exchange rules would be made by the Director of Arbitration, which is subject to Board of Directors' review, and would be based upon a finding that a claim has at least an indirect nexus to Exchange business. For example, the Exchange may make its forum available for the resolution of a claim involving discrimination, upon the mutual request of the parties, if the claim involves an allegation that the conduct has an effect upon CBOE trading activities, if the primary business of the parties is trading or facilitating exchange transactions, or if the member and associated person are only members of the CBOE.[12]

CBOE believes that its policy allowing voluntary, post-dispute agreements to arbitrate is consistent with the EEOC's ''Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment,'' [13] which supports alternate dispute resolution programs that are entered into after a dispute has arisen. This policy also furthers the Exchange policy that allows the parties to an arbitration to mutually agree to alter the arbitration procedures set forth in Chapter XVIII of the Exchange's *Constitution and Rules*, upon the consent of the Director of Arbitration.

[12] The Exchange clarified that the examples provided must still satisfy the ''Exchange business'' requirement. As a result, even if members or associated persons are only members of CBOE, the claim still must have a nexus with Exchange business before the claim could proceed under the Exchange's arbitration program. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, CBOE, Nancy Nielsen, Assistant Corporate Secretary, CBOE, and Terri Evans, Attorney, Division of Market Regulation, Commission, on February 17, 1999.

[13] EEOC Notice 915.002, issued July 10, 1997.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of section 6(b)(4) of the Act [15] in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members and persons associated with members.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[16] and subparagraph (e)(1) of Rule 19b–4 [17] 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.[18] Persons making written submissions should file six copies thereof with 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–01 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4958 Filed 2–26–99; 8:45 am]

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[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(i).

[17] 17 CFR 240.19b–4.

[18] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41082; File No. SR–CSE–99–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to a Specialist Revenue Sharing Program

February 22, 1999.

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 February 18, 1999, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. 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 CSE proposes to amend the schedule of fees set forth in Exchange Rule 11.10. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 11.10 National Securities Trading System Fees

A. Trading Fees.

(a) Agency Transactions. As in the case for Preferenced transactions members acting as an agent will be charged the per share incremental rates as noted below for public agency transactions:

Avg. daily share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 *and higher* [2,000,000]	0.0005

*Odd-Lot Shares Excluded.

(b)–(g) No Change.

(h) Preferenced Transactions. Designated Dealers that are Preferencing transactions are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750.001 to 1,250,000	0.0007
1,250,001 *and higher* [2,000,000]	0.0005

* Odd-Lot Shares Excluded.

(i) No Change.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue (''SOR'') shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue which is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue which is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealers' pro rata contribution to SOR. In no event shall the amount of revenue shared with Designated Dealers exceed SOR.

(j)–(o) To be renumbered (k)–(p).

* * * * *

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 CSE 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 CSE 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 provide an incentive for growth in specialist activity on the Exchange. CSE believes that its strength lies in its ability to operate at significantly lower expense levels than its competitors. To utilize this operating leverage and compete more effectively for order flow, the Exchange proposes to significantly reduce the cost of doing business for specialist firms by means of a quarterly revenue sharing program.

The proposed rule change contemplates the Exchange sharing with specialist firms all or a portion of CSE's Specialist Operating Revenue (''SOR''), after operating expenses and working capital needs have been met. SOR is defined as all operating revenue which is generated by specialists. Such revenue consists of transaction fees, book fees, technology fees, and Consolidated Tape Network A and B market data (''Tape A'' and ''Tape B'') revenue which is attributable to specialist trade activity. All regulatory monies and investment income are excluded from SOR.

Under the proposal, CSE's Board of Trustees would have the authority to determine on an ongoing basis the appropriate amount of SOR to be shared with specialist firms. In making this determination, the Board would be guided first by CSE's objective of offsetting all specialist fees and then by the need to balance the objective of sharing the remainder of SOR with the objective of retaining the financial integrity of the Exchange. To simplify the administration of the revenue sharing program and smooth out monthly expense fluctuations, the program will operate on a quarterly basis. Initially, the Board has determined to share 100% of the first $750,000 in quarterly SOR and 50% of all quarterly SOR over $750,000, after actual expenses have been paid and the budgeted working capital goal has been set aside.

SOR will be shared with specialist firms on a pro rata basis. After the Exchange has accounted for operating expenses and working capital contributions, each specialist firm will receive a percentage of the SOR to be shared which is equal to that specialist firm's percentage contribution to SOR. In no event will the amount of revenue shared with specialist firms exceed SOR. Furthermore, while Tape B revenue is included in SOR, it is excluded from the specialist firm percentage contribution calculation because CSE's current transaction charge on Tape B activity is already zero and the Exchange already has in place a program which shares up to 40% of Tape B revenue with its specialist firms.[3] Finally, the proposed rule

[3] *See* Securities Exchange Act Release No. 39395 (December 3, 1997) 62 FR 65113 (December 10, 1997).

change eliminates the current two-million-share average daily cap on preferencing charges.

The application of the proposed revenue sharing program can be demonstrated by the following example. Assume that the Exchange has SOR in a given quarter of $2 million, that all other operating revenue equals $250,000 during that quarter, that actual quarterly expenses equal $1.5 million, and that the working capital target for the quarter is $250,000. In addition, assume that Specialist Firm #1 contributes $500,000 in quarterly SOR (or 25% of total SOR), Specialist Firm #2 contributes $300,000 (15%), and Specialist Firms #3, #4, and #5 each contribute $200,000 (10%). In this event, $500,000 (*i.e.* $2.25 million minus $1.75 million) would be available for sharing with specialist firms. Specialist Firm #1 would receive $125,000, or 25% of $500,000; Specialist Firm #2 would receive $75,000; and Specialist Firms #3, #4, and #5 would each receive $50,000. In this example, the Exchange would never share more than $2 million with its specialist firms even if actual expenses and working capital needs were less than $250,000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(B)(5)[5] in particular, in that it is designed to promote just and equitable principles of trade, 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. The Exchange believes that the proposed rule change will create an incentive for members to bring order flow to the Exchange, thereby increasing competition which, in turn, will enhance the National Market System.

In addition, the Exchange believes the proposed rule change furthers the objectives of section 6(b)(4)[6] in that it is designed to provide for the equitable allocation of reasonable fees among its members. Specifically, the proposal provides for revenue sharing with CSE's specialist firms, who are primarily responsible for the Exchange's financial viability and growth.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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, 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 CSE. All submissions should refer to File No. SR–CSE–99–02 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41075; File No. SR–NASD–99–4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

February 19, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') 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. 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 Association is proposing new NASD Rule 2315, which requires members to review current financial statements of, and current business information about, an issuer prior to recommending a transaction to a customer in an over-the-counter (''OTC'') equity security. Additionally, the proposed rule change would amend NASD Rule 6740 to permit members to submit a certification to the Association that states that the member has conducted a review of specified information and has fulfilled its obligations under Rule 15c2–11 under the Act[3] for documents that currently reside on the SEC's Electronic Data Gathering and Retrieval System (''EDGAR'') database. Below is the text

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c2–11.

of the proposed rule change. Proposed new language is in *italics*.

* * * * *

2315. Recommendations to Customers in OTC Equity Securities

The requirements of this Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

(a) (1) No member or person associated with a member shall recommend to a customer the purchase, sale, or exchange of any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member has reviewed current financial statements of, and current business information about, the issuer, and makes a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(2) For purposes of this Rule, ''current financial statements'' shall include:

(A) A balance sheet as of a date less than 16 months before the date of the recommendation;

(B) A statement of profit and loss for the 12 months preceding the date of the balance sheet;

(C) If the balance sheet is not as of a date less than 6 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

Financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with any regulatory authority, including the Commission, foreign regulatory authorities, bank and insurance regulators; and

(E) All financial information contained in registration statements, including any amendments, with respect to securities transactions registered under the Securities Act of 1933 (Securities Act), or in the case of securities offered pursuant to the exemptions from registrations provided by Regulation A, Rule 505, or Rule 506 under the Securities Act, all financial information provided in connection with offerings conducted pursuant to those rules.

(b) If an issuer has not made current filings required by any regulatory authority, including the Commission, a foreign regulatory authority, or bank and insurance regulators, such review must include inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(c) For purposes of this Rule, ''quotation medium'' shall mean any quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell.

(d) A member firm shall designate a registered individual to conduct the review required by this rule. In making such designation, the member firm must ensure that

(1) Either the individual is registered as a Series 24 principal, or his conduct in complying with the provisions of this Rule is appropriately supervised by a Series 24 individual; and

(2) Such designated individual has the requisite skills, background and knowledge to conduct the review required under this rule.

(e) The requirements of this Rule shall not apply to:

(1) Transactions that meet the requirements of Rule 504 of Regulation D under the Securities Act and transactions with an issuer not involving and public offering pursuant to Section 4(2) of the Securities Act;

(2) Transactions with or for an account that qualifies as an ''institutional account'' under Rule 3110(c)(4) or with a customer that a ''qualified purchaser'' under Section 3(c)(7) of the Investment Company Act;

(3) Transactions in an issuer's securities if the issuer has $100 million in assets and $10 million in shareholder's equity as of date of the issuer's most recent audited balance sheet, which balance sheet should be of a date within 6 months prior to the recommendation; or

(4) Transactions in securities of a bank under Section 3(a)(4) of the Securities Exchange Act of 1934 and or insurance company subject to regulation by a state or federal bank or insurance regulatory authority.

* * * * *

6740. Submission of Rule 15c2–11 Information on Non-Nasdaq Securities

(a)–(d) No change.

(e) As an alternative to submitting to the Association a copy of the documents required by paragraph (b) of the Rule, a member may submit to the Association a certification signed by a principal of the member firm stating that the firm has complied with the requirements of SEC Rule 15c2–11, including the member's affirmative review obligation, as to any submission with respect to which the required documents currently reside in the SEC's EDGAR database.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD has actively studied the OTC market in an effort to address abuses in the trading and sales of thinly-traded, thinly-capitalized (''microcap'') securities quoted on the OTC market. The securities that are the subject of the proposed rule change are not listed on Nasdaq or any exchange and are quoted on the OTC Bulletin Board (''OTCBB''),[4] in the ''pink sheets'' published by the

[4] The OTCBB is a quotation service that displays real-time quotes, last sale prices, and volume information in domestic and certain foreign securities. Eligible securities include national, regional, and foreign equity issues, warrants, units, and American Depositary Receipts not listed on any other U.S. national securities market or exchange. Unlike Nasdaq or registered national securities exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing and maintenance standards—individual brokerage firms, or market makers, enter quotations for specific securities on their own behalf through the OTCBB.

National Quotation Bureau, Inc. (''Pink Sheets''), and in other quotation media where there are no listing requirements. The NASD is concerned with actual and potential fraud or manipulation in the markets for these securities, and the connection between potential fraud and manipulation and the lack of reliable and current financial information about issuers of microcap securities.

In the listed securities markets, the quoted price of a security helps to reflect the information available about the listed security and its issuer. In the OTC market, there are no listing standards and, therefore, there is a greater need for firms to independently review financial statements to verify that a recommended transaction in a microcap security is suitable.[5] This proposal is meant to address this issue.

Proposed Rule 2315—Recommendation Rule. Proposed Rule 2315 (''Recommendation Rule'') would prohibit a member or associated person from recommending a transaction to a customer in an OTC equity security that is published or quoted regularly in a quotation medium unless the member has first reviewed current financial statements and other business information about an issuer and determined that this information, along with other information available, provides a reasonable basis for making the recommendation. Application of the rule would be limited to equity securities that are not listed on Nasdaq or any national securities exchange, and that are quoted on the OTCBB, in the Pink Sheets, or in any other system that regularly disseminates indications of interest and quotation information. Such systems would include Web sites, issuer trading services, and other member or non-member systems that provide this data to the public.

The requirements in the proposed rule would not affect requirements under the federal securities laws and under NASD rules requiring a broker-dealer that recommends securities to its customers to have a reasonable basis for those recommendations.[6] In addition, the proposed rule expressly is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

The proposed rule requires members to obtain and review the issuer's ''current financial statements'' as defined in paragraph (a)(2) of the proposed rule. Specifically, members would be required to obtain and review an issuer's balance sheet that is dated within 16 months of the date of the recommendation, as well as a profit and loss statement for the period of 12 months preceding the date of the balance sheet. Also, members would have to obtain and review any financial statements filed during the 12 months preceding the date of the recommendation.

Under circumstances in which a proposed recommendation to the customer is not made within 6 months of the date of the issuer's balance sheet, the member would be required to obtain and review an additional profit and loss statement of the issuer from the date of the balance sheet to a date within 6 months of the proposed recommendation to the customer.[7] For example, if a member proposes to make a recommendation to a customer on March 15, 1999, the member would be required to obtain and review the following information to satisfy the proposed rule: A balance sheet of the issuer with a calendar year-end of December 31, 1997; a profit and loss statement for the 12-month period ended December 31, 1997; and a 9-month interim profit and loss statement for the period of January 1, 1998, through at least September 30, 1998.

When issuers file reports with the SEC or with other foreign or domestic regulatory authorities, the proposed rule would require members to collect and review all financial statements and other financial reports filed by the issuer within the 12 months preceding the recommendation. Members also must obtain and review financial information contained in registration statements of registered securities and all financial information provided in connection with securities offered pursuant to an exemption from registration.

If an issuer has not made current filings as required by a regulatory authority, a member must inquire into the circumstances concerning the issuer's failure to file current reports, and determine based on all the facts and circumstances whether a recommendation is appropriate under the circumstances. The evidence of the determination to make a recommendation in this situation should be in writing and maintained by the member.

The proposed rule requires a member to designate registered individual to conduct a review of the information specified in paragraph (a)(2) of the proposed rule. In making this determination, a member firm must ensure that either the individual is registered as a Series 24 principal, or his conduct in complying with the provisions of this proposed rule is appropriately supervised by a Series 24 individual. The designated individual should possess the requisite skills, background, and knowledge to conduct the review required by the proposed rule. The associated person making the recommendation to the customer is obligated, prior to the recommendation, to assure that the member has conducted such a review of the specified information in accord with the proposed rule. The member should document the list of information reviewed, the date of the review, and the name of the person performing the review of the required information under the proposed rule.

Exemptions. The proposed rule exempts from its coverage transactions that are exempt from registration under Section 4(2) of the Securities Act of 1933 (''Securities Act'')[8] and transactions that meet the requirements of Rule 504 of Securities Act Regulation D.[9] This exemption is based on the fact that, unlike the specific disclosure requirements that apply to registered and other offerings, the Securities Act does not mandate that Section 4(2) and Rule 504 issuers furnish specified information to purchasers.

Because of this exemption, there are no specific review requirements under the proposed Recommendation Rule for broker-dealers that recommend transactions in securities exempt from registration under Rule 504 or Section

[5] The Commission notes that the NASD has recently adopted amendments to NASD Rule 6530, *OTCBB Eligible Securities,* to prohibit members from quoting certain securities through the OTCBB. *See* Securities Exchange Act Release No. 40878 (January 4, 1999), 63 FR 1255 (January 8, 1999) (order approving SR–NASD–98–51).

[6] *See, e.g., SEC* v. *Hasho,* 784 F. Supp. 1059 (S.D.N.Y. 1992), citing *SEC* v. *Hanley,* 415 F. 2d 589 (2nd Cir. 1969); Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991) (adopting amendments to Rule 15c2–11), n.22; and NASD Rule 2310, *Recommendations to Customers (Suitability),* which requires a member to have reasonable grounds for believing that a recommendation to a customer is suitable based on the facts disclosed, the customer's other security holdings, and his or her financial situation and needs.

[7] This requirement is similar to language in paragraph (a)(5) of Rule 15c2–11 under the Act, which specifies the information a broker-dealer must review before initiating or resuming quotations for non-reporting issuers' securities. Rule 15c2–11 requires a broker-dealer to obtain and review certain information before initiating or resuming quotations in a quotation medium. 17 CFR 240.15c2–11; *see also* Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (April 25, 1991). On February 19, 1999, the Commission approved the publication of a release reproposing amendments to Rule 15c2–11.

[8] 15 U.S.C. 77d(2).

[9] 17 CFR 230.504.

4(2) of the Securities Act. However, under prevailing law, including Rule 10b–5 under the Act [10] and NASD Rule 2310, a broker-dealer must have a reasonable basis for recommending a securities transaction to a customer and must make an appropriate suitability determination. In order to satisfy these requirements with respect to Rule 504 or Section 4(2) exempt offerings, the broker-dealer must review any information provided by the issuer as well as other relevant information, including information obtained in response to ''red flags'' and otherwise. Broker-dealers that recommend transactions covered by the Recommendation Rule also must comply with these requirements, as well as with the Rule's requirement to review specific identified information.

The rule also exempts transactions with or for institutional investors. For purposes of this exemption, an account or customer must qualify either as an ''institutional account'' under NASD Rule 3110(c)(4) or as a ''qualified purchaser'' under section 3(c)(7) [11] of the Investment Company Act of 1940 (''ICA'').[12] Transactions with or for institutional investors are exempt from the proposed rule because institutional customers are generally knowledgeable and sophisticated regarding investments in this marketplace.

In addition, the exemption would exclude from the scope of the proposed rule securities of certain issuers, including foreign issuers, with at least $100 million in assets and $10 million in shareholders' equity, that are not listed on a national securities exchange or Nasdaq. The exemption is based on the premise that securities of these issuers are more likely to be followed by market analysts, are less likely to be the subject of fraudulent sales practices, and are generally more liquid. This exemption also minimizes the potential that the proposed rule may competitively disadvantage well-capitalized, internationally-traded issuers that have chosen not to list on a national securities exchange or Nasdaq.

In setting the financial criteria for an exemption, the NASD selected financial criteria of at least $100 million of total assets and stockholders' equity of at least $10 million. These criteria comport with NASD Rule 4420(f) and Section 107(A) of the American Stock Exchange Guide, which set forth the financial standards to qualify to quote on the Nasdaq and the Amex, respectively, for ''other securities'' that are not otherwise covered by conventional listing criteria for domestic and foreign issuers. In order to rely on the size exemption, a member must obtain the issuer's audited financial statements prepared in accordance with either U.S. or foreign Generally Accepted Accounting Principles and dated within 6 months of the date of the recommendation or trade to determine whether the issuer's securities quality for the exemption.

Under the proposed rule, securities of banks, as defined under section 3(a)(6) of the Exchange Act,[13] and insurance companies are exempt from the proposed rule on the ground that banks and insurance companies are subject to independent oversight by federal and state regulatory authorities, and are less likely to be the subject of market manipulation or issuer fraud.

Amendments to NASD Rule 6740. Currently, NASD Rule 6740 requires members to submit the Association certain specified information as required by Rule 15c2–11 under the Act before the member can initiate or resume quotations in a non-Nasdaq security in any quotation medium. The proposed amendment to NASD Rule 6740 will permit members to elect not to submit to the Association hard copies of issuer reports that are filed by the issuer through the SEC's EDGAR database and that currently reside on such system. Under this alternative, members may submit to the NASD a certification that states that the member has conducted a review of the relevant documents and has fulfilled its Rule 15c2–11 obligations, including the affirmative review obligation. This certification must be reviewed and signed by a principal of the member firm.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) [14] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. The NASD believes that the proposed rule change will address actual and potential fraud in the quotation and trading of unlisted securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 98–15 (''Notice'' or ''NTM'') in January 1998. A total of 43 comments were received in response to the Notice. As published in the Notice, proposed Rule 2315 would have required members to review certain financial statements of an issuer prior to making a recommendation in an OTC equity security to a customer and deliver to customers a disclosure statement regarding the differences between listed and OTC markets prior to the first purchase and annually thereafter (Rule 2360, which was proposed to be numbered Rule 2350 at the time the NTM was published).

Of the 43 responses received, most (25 responses, or approximately 60%) were from broker-dealer firms or registered persons and the balance (18 comments, or approximately 40%) were from individual investors, issuers, various state agencies, trade associations, and other interested parties. In providing comments, a majority of commenters expressed a position (*i.e.*, approval or disapproval) regarding each specific proposal. Other commenters did not provide a stated position on each proposal, but identified particular issues with certain proposals and provided written comments.

As to proposed Rule 2315, 11 commenters approved or approved with qualification, and 18 commenters disapproved of, the rule proposal. The comments generally in favor of the proposal approved of the rule'placing responsibility on the firm that is soliciting an order and indicated that, unless a broker-dealer is compelled to maintain information and review this

[10] 17 CFR 240.10b–5.

[11] 15 U.S.C. 80a–3(c)(7).

[12] NASD Rule 3110(c)(4) defines an ''institutional account'' as the account of a bank, savings and loan association, insurance company, or registered investment company; an investment adviser registered under Section 203 of the Investment Advisers Act of 1940; or any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million. The term ''qualified purchaser'' as used in Section 3(c)(7) of the ICA is described in Section 2(a)(51) of the ICA as: (1) individuals (including any shared ownership interest in an issuer with the person's qualified purchaser spouse) who own not less than $5 million in investments; (2) specified family-owned companies with not less than $5 million in investments; (3) trusts established and funded by qualified purchasers for which investment decisions are made by a qualified purchaser; and (4) entities that in the aggregate own and invest on a discretionary basis for their own account, or for the accounts of other qualified purchasers, not less than $25 million in investments. 15 U.S.C. 80a–2(a)(51).

[13] 15 U.S.C. 78c(a)(6).

[14] 15 U.S.C. 78*o*–3(b)(6).

information, fraudulent omission of material fact will occur. The comments opposing the proposal generally maintained that the current rules are sufficient and the proposed rules are extremely burdensome. In particular, the opponents state that the record-keeping and compliance burden is particularly chilling to these stocks and the time it takes to locate and review financial statements on a company will limit a firm's choice of stocks to recommend.

The Association is not proposing to adopt Rule 2360 at this time. Therefore, this proposed rule change does not discuss the comments on that proposed rule.

After the public comment process, the staff recommended and the NASD and NASD Regulation Boards approved the following modifications to the proposed rule at their meetings in May 1998. Proposed Rule 2315 was amended to add exemptions for securities of certain financially sizable issuers, securities of banks and insurance companies, and transactions with institutional investors. In addition, the Rule was amended to require a member to review certain current financial information and other business information about the issuer, in addition to the requirements set out in the original rule proposal, before making a recommendation to a customer, and to require members to designate a qualified registered individual to review the information required by the rule.

After NASD Board approval of the modifications to the proposed rules in May, the staff received an additional comment that requested the staff to consider an additional exemption from the scope of proposed Rule 2315. The commenter suggested that recommended sales transactions in OTC equity securities with customers should be exempt from proposed Rule 2315. The premise for the exemption is based on the need to expedite liquidation of customer positions in OTC equity securities without the need for a member to review specified information regarding the issuer as required by the proposed rule. The commenter suggested that a delay in processing the sale may preclude a customer from capturing a particular market opportunity which may result in the customer reducing his return or increasing his loss in a particular investment. The suggested exemption would not apply to short sales by investors in these securities. Due to the nature and the timing of the comment, NASD staff requested that the Commission specifically seek comment in its notice to the public on the potential need for such an exemption from proposed Rule 2315.

At a subsequent Board meeting in December 1998, the staff recommended and the Board approved further modifications to Rule 2315. In particular, the Board approved an expansion of the definition of ''current financial statements'' in NTM 98–15 to include financial information contained in the registration statements of Securities Act registered securities and all financial information provided in connection with securities offered in connection with exemptions from registration provided by Regulation A,[15] Rule 505,[16] or Rule 506.[17] The Board also approved a revision to the exclusions from the Rule for initial public offerings and offerings conducted in compliance with Regulation A and Rules 504–506 under the Securities Act. That exemption is now limited to transactions that meet the requirements of Rule 504 and Section 4(2) transactions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Specifically, the Commission seeks comment on the potential need for an exemption from proposed NASD Rule 2315 for recommended sales transactions in OTC equity securities. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–4 and should be submitted by March 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4954 Filed 2–26–99; 8:45 am]

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[15] 17 CFR 230.251.

[16] 17 CFR 230.505.

[17] 17 CFR 230.506.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41056; File No. SR–NASD–97–79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Fees and Hearing Session Deposits for the Arbitration of Claims by Public Investors, Members and Associated Persons

February 16, 1999.

I. Introduction

On October 29, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules IM–10104, 10205 and 10332 of the NASD's Code of Arbitration Procedure (''Code'') to increase the arbitration filing fees, hearing session deposits, and arbitrator honoraria for intra-industry and public investor arbitrations administered by NASD Regulation.[3]

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This rule filing replaced SR–NASD–97–39, in which NASD Regulation originally proposed amendments to the filing fees and hearing session deposits.

39346 (November 21, 1997), 62 FR 63580 (December 1, 1997). Forty-three comment letters were received on the proposal.[4] The NASD responded to comments on February 12, 1998, February 24, 1998 and March 31, 1998.[5]

II. Description

Background and Introduction

NASD Regulation is proposing to amend the Code to increase the filing fees and hearing session fees charged to public investors, member firms and associated persons for arbitrating disputes under the Code. In addition, NASD Regulation is proposing to increase the honoraria paid to arbitrators. The fees and deposits for arbitration proceedings fall generally into three categories: (1) Filing fees; (2) hearing session fees; and (3) member surcharges. This filing does not concern member surcharges.

Filing fees are submitted by the party filing a claim and are required for all claims, including cross-claims, counterclaims and third party claims. These fees pay some NASD Regulation's average direct costs of administering the early stages of an arbitration case.[6]

Hearing session fees may be assessed by the arbitrators for each hearing session held in a case.[7] Arbitrators decide who will pay these fees in their award at the end of the case. Claimants have to deposit with NASD Regulation the hearing session fee for the first hearing when they file their claim,[8] and arbitrators may request that either party submit additional deposits of hearing session fees as the case progresses. A hearing session deposit is intended as an advance payment for the first, or a subsequent, hearing session. If pays some of NASD Regulation's average direct cost of conducting a hearing session.

Under the existing fee structure and these proposed fees, NASD Regulation is subsidizing through fees on members only and through general revenues the cost of administering arbitration cases for investors with small and moderate claims.

Proposed Rule Change

NASD Regulation is proposing to amend the schedules of fees for both intra-industry and public investor disputes. The filing fees and hearing session deposit changes proposed are discussed in four separate categories: (1) Filing fees for claims by public investors against members (''Public Investor-Member Disputes''); (2) filing fees for claims by members against public customers (''Member-Public Investor Disputes'') or other members or associated persons (''Intra-industry Disputes'');[9] hearing session fees and deposits in all cases between public investors and members, and in intra-industry cases; and (4) miscellaneous changes. NASD Regulation also proposes changes to the arbitrator honorarium schedule.

Filing Fees: Public Investor-Member Disputes. NASD Regulation is proposing to amend Rule 10332 to increase the filing fee for disputes between a public investor claimant and a member respondent by an average of 50 percent in most brackets[10] and add three new brackets to graduate further the fee schedule.[11] The proposed filing fees

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[4] *See* letters from Daniel A. Ball, Lewis, Goldberg & Ball, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 3, 1997 (''Letter 1''); Erwin Cohn, Cohn & Cohn, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 3, 1997 (''Letter 2''); J. Boyd Page, Page & Bacek, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 11, 1997 (''Letter 3''); Diane A. Nygaard, The Nygaard Law Firm, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 10, 1997 (''Letter 4''); Gary M. Berne, Stoll, Stoll, Berne, Lokting & Schlachter, P.C. to Margaret H. McFarland, Deputy Secretary, Commission, dated December 4, 1997 (''Letter 5''); Martin R. Galbut, Galbut & Conant, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 4, 1997 (''Letter 6''); Robert Dyer, Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 4, 1997 (''Letter 7''); Neal J. Blaher, Law Office of Neal J. Blaher, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 3, 1997 (''Letter 8''); (there is no Letter 9); Patricia A. Shub, Patricia A. Shub, P.A., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 10, 1997 (''Letter 10''); Michael R. Casey, Casey and Molchan, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 10, 1997 (''Letter 11''); Mark A. Tepper, Mark A. Tepper, P.A., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 11, 1997 (''Letter 12''); J. Pat Sadler, Sadler & Associates, P.C., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 8, 1997 (''Letter 13''); Philip M. Aidikoff and Robert A. Uhl, Aidikoff & Uhl, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 12, 1997 (''Letter 14''); Martin L. Feinberg, to Jonathan G. Katz, Secretary, Commission, dated December 10, 1997 (''Letter 15''); James E. Beckley, James E. Beckley and Associates to Jonathan G. Katz, Secretary, Commission, dated December 19, 1997 (''Letter 16''); Public Investors Arbitration Bar Association (''PIABA''), dated December 11, 1997 (''Letter 17''); Barry D. Estell, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 4, 1997 (''Letter 18''); James E. Beckley, Securities Industry Conference on Arbitration (''SICA''), to Jonathan G. Katz, Secretary, Commission, dated December 10, 1997 (''Letter 19''); Andrew O. Whiteman, Hartzell & Whiteman, LLP, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 11, 1997 (''Letter 20''); Seth E. Lipner, Deutsch & Lipner, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 11, 1997 (''Letter 21''); Harold J. Bender, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 9, 1997 (''Letter 22''); Emily Feldman, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 10, 1997 (''Letter 23''); Lawrence Sullivan, to Margaret McFarland, Deputy Secretary, Commission, dated December 10, 1997 (''Letter 24''); Joseph C. Long, Professor of Law, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 11, 1997 (''Letter 25''); Joseph D. Sheppard III, Carnahan, Evans, Cantwell & Brown, P.C., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 19, 1997 (''Letter 26''); Robert D. Mitchell, Mitchell Law Offices, to Margaret H. McFarland, Deputy Secretary, Commission, dated December 12, 1997 (''Letter 27''); Peter R. Cella, Duignan & Cella, to Jonathan G. Katz, Secretary, Commission, dated December 15, 1997 (''Letter 28''); Diane Nygaard, The Nygaard Law Firm, to Jonathan G. Katz, Secretary, Commission, dated December 30, 1997 (''Letter 29''); Don K. Leufven, Alonso & Cersonsky, P.C., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 12, 1997 (''Letter 30''); James E. Beckley, James E. Beckley and Associates, to Jonathan G. Katz, Secretary, Commission, dated December 30, 1997 (''Letter 31''); Jonathan H. Colman, to Jonathan G. Katz, Secretary, Commission, dated December 22, 1997 (''Letter 32''); Joel E. Davidson, Senior Vice President and Deputy General Counsel, PaineWebber, Inc., to Margaret H. McFarland, Deputy Secretary, Commission, dated January 9, 1998 (''Letter 33''); Scot D. Bernstein, Law Offices of Scot D. Bernstein, to Jonathan G. Katz, Secretary, Commission, dated January 22, 1998 (''Letter 34''); Tracy Pride Stoneman, Susemihl & McDermott, P.C., to Margaret H. McFarland, Deputy Secretary, Commission, dated December 17, 1997 (''Letter 35''); Richard P. Ryder, Securities Arbitration Commentator, to Jonathan G. Katz, Secretary, Commission, dated January 16, 1997[sic] (''Letter 36''); Paul J. Dubow, Senior Vice President and Senior Deputy General Counsel, Dean Witter, Discover & Co., to Jonathan G. Katz, Secretary, Commission, dated January 28, 1998 (''Letter 37''); James E. Beckley, James E. Beckley and Associates, to Jonathan G. Katz, Secretary, Commission, dated January 21, 1998 (''Letter 38''); Morton Levy, to Jonathan G. Katz, Secretary, Commission, dated January 27, 1998 (''Letter 39''); Neal J. Blaher, to Guy P. Fronstin, Staff Attorney, NASD Regulation, dated December February 6, 1998 (''Letter 40''); Neal J. Blaher to Guy P. Fronstin, Staff Attorney, NASD Regulation, dated February 6, 1998 (''Letter 41''); Robert Dyer, Allen, Dyer, Doppelt, Milbrath & Gilchrist, to Linda Fienberg, Executive Vice President of Dispute Resolution, NASD Regulation, dated March 2, 1998 (with attached letter from Neal J. Blaher to Guy P. Fronstin, Staff Attorney, NASD Regulation, dated February 25, 1998) (''Letter 42''); (there is no Letter 43); Richard P. Ryder, Securities Arbitration Commentator, to Jonathan G. Katz, Secretary, Commission, dated September 17, 1998 (''Letter 44''); and Seth E. Lipner, Secretary, PIABA, to Arthur Levitt, Chairman, Commission, dated October 14, 1998 (''Letter 45'').

[5] *See* letters from John M. Ramsey, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 12, 1998 (''Response One''), February 24, 1998 (''Response Two''), and March 31, 1998 (''Response Three'').

[6] Average direct costs are discussed further *infra*.

[7] A hearing session is any meeting between the parties and the arbitrator(s) that lasts four hours or less, including a pre-hearing conference with an arbitrator.

[8] NASD Regulation staff can waive the initial filing fee and hearing session deposit if the claimant demonstrates financial hardship.

[9] The proposed rule change treats associated persons of members like public customers for purposes of fees.

[10] Fees are based on the amount in dispute, and ''bracket'' refers to a range of amounts in dispute (*e.g.*, $50,000.01 to $100,00) to which a particular fee applies.

[11] For example, the old bracket of fees for claims of $10,000.01 to $30,000 has been divided into two

range from $25 to $600, while the current filing fees range from $15 to $300.

Filing Fees: Member-Public Investor Disputes and Intra-Industry Disputes. NASD Regulation is proposing to amend Rule 10332 to change to the filing fees when a member files a claim against a public investor. The current filing fee is $500 for all brackets. NASD Regulation is proposing to substitute a graduated filing fee beginning at $200 (for claims of $1,000 or less) and ending at $5,000 (for claims over $10,000,000).

NASD Regulation is also proposing to amend Rule 10205 to increase and graduate the filing fees for intra-industry disputes. Currently, the filing fees are $500 regardless of the amount in dispute. NASD Regulation is proposing to graduate the filing fee from $200 (for claims of $1,000 or less) to $5,000 (for claims over $10,000,000).

Fees for Hearing Sessions. NASD Regulation is proposing to amend Rules 10205 and 10332 to increase the hearing session fees that can be assessed for each hearing session held in a case. The proposal increases the initial deposits required for all cases, and adds three new brackets to graduate further the hearing session deposit schedule.[12] In addition to the initial hearing session deposit required when a case is filed, the hearing session deposit schedule is used by the arbitrators to assess fees for each of the hearing sessions held in case, which together with other miscellaneous costs are referred to as forum fees. The hearing session deposits range from $25 to $1,200. Hearing session fees are the same within brackets for public investor-member, member-public investor, and intra-industry cases.

Miscellaneous Changes. NASD Regulation is proposing to amend Rule 10205(a) to provide that if the claimant is an associated person, he or she will pay the filing fee and hearing session deposit specified for public customers. However, if the associated person is a joint claimant with a member, the member will pay the filing fee and hearing session deposit specified for industry claimants. In order to encourage parties to identify, when possible, the dollar amounts involved in a case, NASD Regulation is also proposing to amend Rules 10205(e) and 10332(e) to increase the hearing session deposit for claims where the amount in dispute is not disclosed by the claimant in the Statement of Claim. The fee will be increased from $600 to either $1,000 or an amount specified by the Director of Dispute Resolution or the arbitrators, not to exceed the maximum hearing session deposit specified in the rules.[13]

Finally, NASD Regulation is proposing to amend Rules 10205(i) and 10332(h) to provide that the filing fees and hearing session fees for large and complex cases brought under Rule 10334[14] will be those specified for cases exceeding $10,000,000. In support of the fees for cases administered under the large and complex case rules, the NASD has stated that there are significant and distinct costs associated with such cases, including an administrative conference, multiple hearing sessions, pre-hearing issues to be resolved and customized arbitration procedures that may be requested by the parties.

Arbitrator Honoraria. NASD Regulation is proposing to amend IM–10104 to increase the honoraria paid to arbitrators. The honorarium will be increased from $150 to $200 per arbitrator for each hearing session, with an additional $75 per day for the chairperson of the panel. The Office of Dispute Resolution's honorarium cost for a panel of three arbitrators for one hearing session under the proposed schedule is $675. The honorarium for a pre-hearing conference will be $200. The honorarium for a case not requiring an oral hearing will be increased from $75 to $125.

Direct Costs of Administering Arbitration Cases

NASD Regulation states that the fees proposed in this rule filing were developed to recover much of its average direct costs for administering arbitration cases. In developing the proposed fee increases, NASD Regulation reports that it identified the average costs attributable to such activities as receiving, processing, analyzing, and serving claims, selecting arbitrators, and scheduling and conducting hearings.[15] The proposed filing and hearing session fees do not pay for NASD Regulation's general costs for administering the arbitration department, including costs for arbitrator recruitment and training, computer systems, office space, senior management and legal services. Instead, these fees are designed to cover the actual costs incurred by NASD Regulation in administering particular cases. NASD Regulation estimates that the revenue from the proposed filing and hearing session fees will total about 68% of its average direct costs for administering cases.[16]

In particular, NASD Regulation states that the filing fees were designed to cover much of the actual costs of the arbitration process from filing up to the pre-hearing conference. These costs include the processing, analyzing and serving of claims, and selecting arbitrators. In lower bracket cases, NASD Regulation states that the filing fees are lower than its cost of providing the service, and in larger bracket cases, the filing fees approach but do not exceed its average cost of providing the service. The costs generally increase as the amount in controversy increases.

Similarly, NASD Regulation states that the hearing session fees are designed to cover some of the actual costs of administering a hearing. The cost of conducting a hearing session includes arbitrator compensation and travel expenses, hearing conference rooms, and the cost and expenses of NASD Regulation staff directly involved

brackets: one from $10,000.01 to $25,000 with a new filing fee of $125 (compared to $100 for the old bracket), and another from $25,000.01 to $30,000 with a new filing fee of $150. The old bracket was divided to take into account the new ceiling for simplified arbitration cases, which was raised from $10,000 to $25,000. *See* Securities Exchange Act Release No. 38635 (May 15, 1997), 62 FR 27819 (May 21, 1997) (SR–NASD–97–22). The largest filing fee increases are for the largest cases; for example, the filing fee for claims of more than $10,000,000 is being raised 100 percent from $300 to $600.

[12] For example, the old bracket for claims of $10,000.01 to $30,000 has been divided into two bracket, one from $10,000.01 to $25,000 with a new hearing session deposit of $450 (compared to $300 for the old bracket) for single arbitrator, and another from $25,000.01 to $30,000 with a new hearing session deposit of $450. In the $25,000.01 to $30,000 bracket the hearing session deposit for three arbitrators will be $600 (compared to $300 for the old bracket). The hearing session deposit for claims of $5,000.000.01 or more is being reduced to $1,200 from $1,500.

[13] In cases where the claimant is seeking a remedy other than damages (recision, for example) and does not specify damages, NASD Regulation has stated that its staff will attempt to establish the market value of the securities that are the subject matter of the claim before resorting to the higher maximum default fee specified in paragraph (e) of the two rules.

[14] Rule 10334 (the rule for large and complex cases) was extended for five years and the use of the procedures is now entirely voluntary. *See* Securities Exchange Act Release No. 39024 (September 5, 1997), 62 FR 47856 (September 11, 1997).

[15] NASD Regulation described its cost analysis, noting in part that the cost of these functions was identified by totaling the staff hours and other expenses devoted to the function. Also, the number of occurrences of the function was counted. The total cost was divided by the number of occurrences to derive the average cost.

[16] While its latest budget figures suggest that the filing and hearing session fees may pay for approximately 68% of its direct costs of arbitrating disputes, NASD Regulation's actual experience with revenue received as of June 4, 1998 suggests that the fees may pay approximately 50% of the direct costs. *See* letter from Elliott Curzon, Assistant General Counsel, NASD Regulation, to Robert A. Love, Special Counsel, Division of Market Regulation, Commission, dated June 4, 1998.

in the case. NASD Regulation states that its analysis indicates the projected average cost to provide a single hearing session is $1,200. The hearing session fees proposed in this filing for three person panels are graduated, from $600 (for cases involving $25,000.01 to $30,000) to $1,200 (for cases above $500,000).[17]

III. Summary of Comments

The Commission received 43 comment letters on the proposed rule change, of which 40 opposed the proposed rule change and three favored it.[18] The NASD responded to comment letters.[19]

Increasing Fees Will Deter Investors

Many of the commenters argue that the arbitration fees are already too high,[20] and that the proposed increase in fees will deter investors from filing claims and impair investors' ability to obtain compensation.[21] One commenter suggests that the proposed fee increases could cause claimants to underestimate or not include damages in their claims in an effort to avoid paying the higher filing fees.[22] Two of the commenters, investors with claims in arbitration, state that it was a burden for them to file a claim under the current fee structure.[23] One of them also states that she could have gone to court at a lower cost but was prevented from doing so because of her arbitration contract.[24] One commenter argues that the fee increase would destroy confidence in the system.[25] In addition, commenters state that arbitration proceedings are already more expensive than filing an equivalent claim in court.[26] One commenter states that because NASD Regulation will be charging hearing session fees for the pre-hearing conferences, firms could delay proceedings by engaging in elaborate motion practice and requesting pre-hearing conferences on a variety of motions, which could impose an additional financial burden on public customers.[27]

In support of the proposed rule filing, one commenter argues that the cost of arbitration is still less than cost of litigation because a plaintiff incurs filing fees in court and is subject to significant out-of-pocket expenses for deposition transcripts, court reporters and transcripts, and travel associated with depositions.[28] That commenter also argues that requiring a claimant to incur some meaningful expense would weed out frivolous claims but not discourage valid claims. Finally, the commenter argues that others' claims of undue burden are overstated because he has never encountered a claimant who stated the current fee was not affordable or who asked the commenter's firm to pay the filing fee.

In its response to the comment letters, NASD Regulation states that it does not believe that the increased filing fees will constitute a deterrent to arbitration because they remain a small portion of the amounts alleged as damages (below one percent) and because the Director of Dispute Resolution can waive the fees upon a demonstration of financial hardship.[29]

NASD Regulation responds to the concern about the expense of pre-hearing conferences by stating that these conferences may save parties money because they may avoid or reduce time-wasting disputes over discovery, evidence, presentations and similar matters. NASD Regulation, which bases its views on feedback from parties and observations by staff, also states it will continue to monitor the pre-hearing conference process to evaluate its effectiveness.

Securities Industry Should Pay for Fee Increases

Many securities firms ensure that any future disputes they may have with customers will be handled in arbitration through the use of predispute arbitration clauses in their customer agreements. Numerous commenters argue that the securities industry should pay most, if not all, of the proposed fee increase[30] because it costs the industry less money to handle its cases in arbitration,[31] rather than in court.[32] For example, one commenter argues that the securities industry should bear any fee increases to cover NASD Regulation budget deficits because of the cost savings it receives by avoiding both jury trials and the higher fees charged by the American Arbitration Association (''AAA'').[33] Two commenters argue that, because customers are compelled to use NASD arbitration by their brokerage firms, it is unfair to require them to deposit as much as half of the projected cost of arbitration (which they state is possible under the proposed fee increase) in order to pursue their claims.[34] Another commenter argues that the NASD's high expenses are a consequence of the industry's successful efforts to compel arbitration at the NASD or other self-regulatory organizations (''SROs''). The commenter maintains that it is inappropriate to combine the industry's ability to choose arbitration over litigation in the courts with an NASD requirement that customers who use the forum must contribute to maintaining it.[35] Two commenters assert that NASD Regulation did not follow the recommendation in *Securities Arbitration Reform*, Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc. (January 1996) (''Task Force Report''), which stated that members should pay most of the costs of arbitration, while investors should only pay a small share of an increase in fees.[36]

In support of the proposed rule change, two commenters argue that members already bear most arbitration costs, and that the current ratio of member and customer fees is maintained in the proposed fee increases.[37] In addition, one commenter argues that the industry should not pay 100% of the fee increase because

[17] Hearing session fees for smaller cases, with a single arbitrator, are between $25 and $450.

[18] *See supra* note 4.

[19] *See supra* note 5.

[20] *See* Comment Letter Nos. 7 (''The NASD fees are already too high, considering the lack of fairness in the procedures''); 17; and 26.

[21] *See* Comment Letter Nos. 1 (''Raising the cost of arbitration increases the financial risks that investors must bear. Investors will be deterred further from filing claims.''); 3 (''We are extremely concerned that proposed fee increases will hurt investors' ability to obtain recovery for legitimate damages * * *.''); 4; 11; 17; 18; 20; 21; 22; 32; 34 (''Fear of filing fees should not deprive public customers of access to justice, yet that is exactly what will be brought about by the NASD's proposal.''); 35; and 39.

[22] *See* Comment Letter No. 32.

[23] *See* Comment Letter Nos. 23 and 24.

[24] *See* Comment Letter No. 23.

[25] *See* Comment Letter No. 16.

[26] *See* Comment Letter Nos. 2; 11; 15; 16; 18; and 34.

[27] *See* Comment Letter No. 10.

[28] *See* Comment Letter No. 33. In contrast, one commenter opposes the proposed rule stating that the argument that litigation is more expensive is weakened by innovations in court procedures such as limits on the length of depositions and sanctions for delays. *See* Comment Letter No. 16.

[29] *See* NASD Response One. NASD Regulation also adds that if the arbitrators assess forum fees against a party that its staff knows is laboring under a financial hardship, that information will be considered in connection with its decision whether to initiate collection efforts.

[30] *See* Comment Letter Nos. 3; 6; 7; 11; 15; 20; 21; 25; 26; 28; 30; 32; 34.

[31] *See* Comment Letter Nos. 7; 26; and 34 (''The securities industry gets the benefits of forced arbitration of disputes. There is nothing wrong with the securities industries paying for that benefit through its trade organization.'').

[32] *See* Comment Letter Nos. 6; 11; 15; 17; 20; 25 (''if the brokerage industry wants * * * to mandate a specific private system, the industry should be willing and required to bear virtually the entire expense of that system''); 28; and 32.

[33] *See* Comment Letter No. 30.

[34] *See* Comment Letter Nos. 10 and 11.

[35] *See* Comment Letter No. 8.

[36] *See* Comment Letter Nos. 3 (''the expense of this increase should be borne by the securities industry as recommended by the NASD's Arbitration Policy Task Force''); 16; and 17.

[37] *See* Comment Letter Nos. 33 and 37.

claimants, as well as the industry, benefit from arbitration. The commenter noted in particular that claims in arbitration are resolved more quickly than claims in litigation.[38]

NASD Regulation responds that the proposed rule change, in combination with previous rule changes increasing member surcharges and adding a process fee for members only,[39] ensures that the securities industry will continue to pay most of the costs of arbitration.[40] NASD Regulation states that the notice of the proposed rule change [41] demonstrates that the industry will bear the majority of the costs of operating the arbitration program and that the customer's portion of the costs will continue to be relatively modest. Moreover, NASD Regulation responds that the assertion that some members may enjoy indirect savings from arbitration as a result of lower litigation costs, settlements, or judgments does not provide a basis under the Act for disapproving the proposed rule change. NASD Regulation asserts that the appropriate basis for Commission approval of the proposed rule change is whether the proposed fees provide for the equitable allocation among the users of the arbitration program of reasonable fees.

NASD Regulation argues that claimants also enjoy substantial savings in arbitration because, for example, arbitration takes less time than litigation.[42] It also points out that appeals of decisions are rare, involve narrower grounds and are less likely to succeed, and that claimants avoid the expense of depositions and similar costs associated with discovery in litigation. Finally, NASD Regulation states that arguments concerning whether mandatory arbitration is appropriate should not be addressed by the Commission in this rule filing, and that the Supreme Court has expressly upheld the enforceability of predispute contracts to arbitrate disputes between investors and broker-dealers.[43]

Commenters also argue that the increase in the allocation of fees is significant in percentage terms, and in the dollar amount an investor will have to pay in filing and forum fees.[44] Another commenter states that the NASD should consider the historical allocation of expenses, not the historical revenue split, between member users and investors/individual employee users.[45] The NASD responds that its filing demonstrates that the proposed fees are reasonable because the filing and hearing session fees pay only for a portion of the average direct costs of providing arbitration services to the parties.[46]

Arbitration Contracts

Several of the commenters suggest that the fee increases in the proposed rule change would undermine the rationale underlying the Supreme Court's decision in *McMahon,* which holds that predispute agreements to arbitrate claims between customers and broker dealers under the Act are enforceable.[47] Commenters also argue that arbitration is supposed to be an inexpensive and speedy alternative to litigation, and question how that could continue to be true after the proposed fee increases.[48] NASD Regulation responds that arbitration will continue to be more economical than litigation in light of the complexity of court litigation, especially discovery costs.[49]

Administration of the Arbitration Process

Several commenters assert that the proposed rule change does not address problems with the administration of the arbitration process, and that the Commission should not approve the proposed rule change until NASD Regulation has addressed these problems.[50] Specifically, commenters cite concerns about submitting materials to arbitrators,[51] scheduling,[52] the arbitrator selection process,[53] the discovery process,[54] and the telephone system.[55]

In response, NASD Regulation states that the commenters who argue that the forum is less efficient than courts by comparing arbitration fees to court fees and expenses fail to make a proper comparison. NASD Regulation points to the significant tax subsidy that supports public courts, the large administrative overhead of the court system, and the cost to parties added by the complexity of court litigation. NASD Regulation also states that arbitration is a private forum whose costs must be paid for either by its sponsor or users. It states that it is more equitable to fund arbitration with revenue from member firm users rather than from general assessments against all members. NASD Regulation also states that the overwhelming majority of the costs of the forum will be paid by member users of the forum and not by investors.

In support of the proposed rule change, one commenter states that a fee increase is necessary for NASD Regulation to perform adequately its administrative function because it will help maintain the efficiency of the arbitration process and upgrade arbitrator training.[56]

Fees May Make Arbitration Unaffordable for Some People

Commenters also argue that the proposed fee increases, if implemented, could deny investors equal protection under the law or due process because arbitration would be mandatory, but too expensive for investors.[57] Two

[38] *See* Comment Letter No. 37.

[39] *See* Securities Exchange Act Release No. 38807 (July 1, 1997), 62 FR 36858 (July 9, 1997) (increasing a member surcharge each time a member firm or associated person becomes a party to an arbitration case) and Securities Exchange Act Release No. 39504 (December 31, 1997), 63 FR 1134 (January 8, 1998) (SR–NASD–97–96) (imposing a process fee on members who are parties in arbitration proceedings).

[40] *See* NASD Responses One and Three.

[41] *See* Securities Exchange Act Release 39346 (November 21, 1997), 62 FR 63580 (December 1, 1997).

[42] *See* NASD Responses One and Two.

[43] *See* NASD Response One, *citing Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220 (1987) (''*McMahon*'').

[44] *See* Comment Letter Nos. 17 (''the increase is significant in percentage terms and dollar terms'') and 28.

[45] Comment Letter No. 36.

[46] *See* NASD Response One. In addition, NASD Regulation discussed the general costs and revenues of its program in response to this comment.

[47] *See* Comment Letter Nos. 4; 17; and 48.

[48] *See* Comment Letter Nos. 8 (''[A]rbitration was—and is—intended as a speedy *and inexpensive* alternative to litigation.'') and 34 (''[T]he arbitration concept was originally sold as an inexpensive alternative to traditional litigation. The proposed filing fee increases may not appear large to the professionals who will review them; but they are huge to elderly public customers who are living on fixed incomes and have lost the bulk of their life savings.'') (emphasis in original).

[49] *See* NASD Response One.

[50] *See* Comment Letter Nos. 5; 20; and 21.

[51] *See* Comment Letter No. 5.

[52] *See* Comment Letter Nos. 5; 20; and 21.

[53] *See* Comment Letter Nos. 5; 21; and 35. The Commission notes that it has recently approved a proposed rule change filed by the NASD relating to the selection of arbitrators under a new list selection process. *See* Securities Exchange Act Release No. 40555 (October 14, 1998), 63 FR 56670 (October 22, 1998).

[54] *See* Comment Letter Nos. 20; 21 (''Problems with the discovery process and the abuse thereof * * * have gone unaddressed in these amendments.''); and 26.

[55] *See* Comment Letter Nos. 20 and 21.

[56] *See* Comment Letter No. 37.

[57] *See, e.g.,* Comment Letter Nos. 1 (''[M]any of our clients are denied equal protection under the law because they do not have the financial means to pay for NASD arbitration.''); 12 (''[A]dding additional costs to the Claimant * * * will result in more Claimants being denied fair and reasonable access to the arbitration process * * *. This appears to raise very serious equal protection arguments.''); 13 (''As long as brokerage firms are allowed to force public customers into SRO sponsored arbitration any increase in fees raises equal protection and antitrust issues.''); 16; 18; and 25 (''[T]he customer is required to surrender his right to litigate * * * in court * * * in favor of a private system which he does not want and which, if the fee increases are granted, he will be required to bear a substantial financial burden to support

Continued

commenters argue that to increase the fee to investors would create a system of justice available only to the rich.[58]

NASD Regulation responds that the fees remain a low percentage of the damages claimed, and that NASD Regulation may waive fees and deposits if a customer demonstrates financial hardship.[59] NASD Regulation also responds that mandatory arbitration, which the Supreme Court has upheld, is not at issue in this proposed rule change.

Non-SRO Alternative

Several commenters suggest that NASD Regulation adopt a rule that would allow investors the choice of resolving their disputes at a non-SRO forum, and point that PIABA has submitted a petition to the Commission on this point. They argue that such a rule would eliminate the need for an increased budget or fees for two reasons: first, because many claimants would choose the AAA,[60] which they argue is a better forum than NASD Regulation;[61] and second, because the appropriate fees for NASD Regulation's arbitration services can only be determined when its arbitration forum is required to compete with other arbitration forums.[62] In addition, one commenter suggests that the NASD's arbitration expense projections are high compared with the AAA expenses.[63] In support of the proposed rule change, one commenter argues that the AAA fees are substantially higher than the proposed fees, and that ''claimants' bar is willing to pay higher fees if it deems it to be in its best interest.''[64]

In response, NASD Regulation states that enabling investors to take their claims to AAA would not address commenters' concerns about the cost of arbitration because AAA is no less expensive and is not subsidized by member firms.[65] It also states its understanding that AAA does not waive its fees in cases of financial hardship. NASD Regulation also submitted a comparison of NASD Regulation and AAA fees and charges for customer arbitrations, stating that ''NASD arbitration charges under the proposed new fee schedule will generally be substantially less than the AAA's charges for comparable cases.''[66] In addition, NASD Regulation states that the issue of the widespread use of arbitration contracts raised by the commenters is not before the Commission in connection with this rule filing.

Arbitrator Honoraria

One commenter argues that the arbitrator honoraria should not be increased.[67] The commenter argues that SRO arbitrators are volunteers rendering a public service, not professional arbitrators, and that because the proposed increase would not actually compensate arbitrators for the amount of time they typically devote to cases, the increase would not attract more qualified arbitrators. He also stated that if this honorarium increase did attract arbitrators, it would raise a concern that those arbitrators might not award appropriate damages against respondent firms for fear of being struck from future panels. Another commenter argues that an increase in arbitrator honoraria is reasonable but that it should not apply to pre-hearing conferences.[68] One commenter states that the expense of the arbitrator honoraria increase should be paid by the industry, and characterizes the Task Force Report as supporting this argument.[69]

Miscellaneous

One commenter argues that the proposed fee increase would reduce the uniformity of the arbitration rules used by the SROs and lead to forum shopping, as was typical before SICA was established to create a uniform code.[70] One commenter who supports the proposed rule change states that it takes no position on the issue of uniformity but noted that other SROs are smaller and may have lower expenses, and accordingly no need to increase fees.[71] One commenter argues that the fee increase will cause investors to use other SRO arbitration forums not prepared to handle the increase in case load.[72] Another commenter suggests that NASD Regulation increase the amount it contributes to funding the arbitration budget rather than trying to make arbitration self-sustaining.[73]

One commenter states that public customers' interests are not represented in the administration of the NASD's Arbitration Department.[74] NASD Regulation responds that the public is represented in the administration of the arbitration program because NASD Regulation's National Arbitration and Mediation Committee (''NAMC'') includes several public members.[75] NASD Regulation also responds that three of the six members of its Subcommittee on Arbitration Fees, which was formed by the NASD Regulation Board of Directors to develop the proposed fee increases, are representatives of the public.[76]

Finally, several commenters argue that there have been changes in the NASD's fee administration that have not been noticed for comment, or approved by the Commission, that result in arbitrators increasingly assessing fees against customer claimants, even when these claimants recover an award.[77] One commenter, an individual investor who recently completed an arbitration at the NASD, states that even though he prevailed in arbitration, the arbitrators assessed half the arbitration fees against him.[78] He also states that if he had been allowed to file his claim in court, the fees would automatically have been assessed against the loser. One commenter states that a practice of assessing fees against investors can have the effect of a sanction for bringing losing cases. That commenter argues that the fact that an investor does not prevail does not mean that a ''sanction'' is appropriate.[79] Another commenter notes that there is a developing trend

* * *. Such a condition * * * presents a situation where the customer is actually being denied equal protection of the law.'').

[58] *See* Comment Letter Nos. 3 and 4.

[59] *See* NASD Responses One and Three.

[60] *See* Comment Letter Nos. 7; 26; 27; and 30 (''The American Arbitration Association alternative would be a means of reducing the caseload and the budget deficit of the NASD.'').

[61] *See* Comment Letter Nos. 14; 20 (''AAA's case administration is much, much better * * *. The letter notes also that ''the cost of the AAA is much higher * * *''); 27; and 35.

[62] *See* Comment Letter No. 13.

[63] *See* Comment Letter No. 36.

[64] *See* Comment Letter No. 37.

[65] *See* NASD Response One.

[66] *See* letter from John M. Ramsey, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 18, 1998.

[67] *See* Comment Letter No. 28.

[68] *See* Comment Letter No. 36. The commenter does not believe that pre-hearing conferences warrant the same fee for arbitrators as a hearing session because they are often conducted over the telephone and are of short duration.

[69] *See* Comment Letter No. 3.

[70] *See* Comment Letter No. 28.

[71] *See* Comment Letter No. 37.

[72] *See* Comment Letter No. 16.

[73] *See* Comment Letter No. 4.

[74] *See* Comment Letter No. 11.

[75] *See* NASD Response One.

[76] NASD Regulation identified James E. Burton, CalPERS, Bonnie Guitton Hill, Times-Mirror Corp., and William S. Lapp, Laurie, Libra, Abramson & Thomson and PIABA board member, as representative of the public.

[77] *See* Comment Letter Nos. 1 (''We are experiencing more and more cases where customers are directed by the arbitrators to pay all or 50% of the hearing session fees even when the member firms are found liable.''); 17 (''Over the last two years, it has become common that the arbitrator split arbitral fees between the investor and the firm, even in cases where the investor received a substantial recovery. * * * PIABA is even more disturbed about the NASD's recent implementation of a policy requiring investors to pay, in advance, half the anticipated costs of an arbitration.''); and 39.

[78] *See* Comment Letter No. 24.

[79] *See* Comment Letter No. 17.

among arbitration panels to request additional session deposits. In that commenter's view, this results from information and training materials given to the arbitrators at training sessions, or advice given by employees of NASD Regulation. The commenter views this as inappropriate because fee assessments are a matter of arbitrator discretion.[80]

NASD Regulation responds that, contrary to commenters' assertions, its figures demonstrate that members are paying approximately 80 percent of the fees assessed, and that public investors are paying 20 percent.[81] NASD Regulation stated that it is also revising its arbitrator training to clarify the issues that arbitrators should consider in assessing forum fees in order to encourage the fair allocation of forum fees for investors and industry parties. NASD Regulation states that such factors include whether a party substantially prevailed, or engaged in dilatory or unreasonable conduct. Moreover, NASD Regulation stated in conjunction with this rule proposal that it now advises arbitrators of the dollar amount of the fees that may be assessed under the fee schedules so that they more clearly understand the consequences to all parties of fee allocations based upon a percentage. Previously, some arbitrators may have ordered percentage-based allocation of fees without checking the total dollar amounts that had accumulated over multiple hearing sessions. Finally, NASD Regulation states it is no longer suggesting, in training materials or otherwise, that arbitrators assess interim hearing session deposits until after a substantial number of hearing sessions have been held.[82]

IV. Discussion

Under Section 19(b) of the Act, the Commission must approve a self-regulatory organization's proposed rule change if it finds it is consistent with the Act.[83] The key statutory provision with respect to an association's fees is section 15A(b)(5) of the Act,[84] which requires that the rules of an association provide for the ''equitable allocation of reasonable'' fees.

In support of this proposal, NASD Regulation conducted an analysis of its costs in order to determine how to allocate fees and fee increases reasonably and fairly among members and investor users of the program. In particular, NASD Regulation analyzed its operating cost figures in order to compute appropriate fee increases.[85] NASD Regulation's analysis permitted the Office of Dispute Resolution to extrapolate its likely costs for 1998 and compare them to the expected revenue under the new fee structure. NASD Regulation's analysis of its average cost of performing these activities[86] and a hypothetical cumulative cost for each case,[87] charted against the fee revenue received for each case, indicates that the revenue from filing fees has been expended before a pre-hearing conference is held. NASD Regulation's analysis also indicates that once an award is rendered following a hearing, all of the revenue from the additional forum fees (principally the fees based upon the number of hearing sessions) that could be collected in a case also has been expended.[88] In short, the filing fees and hearing session deposits, even with the increase in fees proposed in this rule filing, do not cover the cost of administering the program.[89]

Based upon the analysis of its costs of administering the arbitration program, NASD Regulation designed the proposed fee increases to attempt to cover the projected actual costs incurred by NASD Regulation in administering particular cases. In particular, NASD Regulation states that the filing fees were designed to cover much of the actual projected costs of the arbitration process from filing up to the prehearing conference. According to NASD Regulation, in the lower bracket cases the filing fees are lower than its cost of providing the service, and in larger bracket cases, the filing fees approach but do not exceed its average cost of providing the service. The hearing session deposit fee increase was also based upon the analysis of the projected average cost to provide a single hearing session.[90]

The Commission believes that the proposed fee increases for members and associated persons are reasonable under the Act because they are designed to cover the direct costs of administering the arbitration program. Moreover, the

[80] *See* Comment Letter No. 8.

[81] *See* NASD Responses One and Three. NASD Regulation states that these percentages cover the time period September 1, 1996 to August 31, 1997. This figure does not include the initial filing fee paid by claimants. When filing fees and hearing session fees are added together, and adjustments are made for deposits and refunds, the customer share of net revenue during that period was 23%. According to NASD Regulation, its data for 1995, 1996 and 1997 also show approximately the same customer to member ratio.

[82] NASD Regulation states it has experienced increasing difficulty collecting forum fees from unsuccessful claimants after an award has been made, and notes its understanding that other, non-industry forums, such as AAA, will not accept a case for disposition unless fees are paid in advance.

[83] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[84] 15 U.S.C. 78*o*–3(b)(5).

[85] NASD Regulation looked at costs associated with such activities as: (1) Receiving and processing claims; (2) analyzing and serving claims; (3) selecting arbitrators; (4) scheduling hearings; and (5) conducting hearing sessions.

[86] NASD Regulation stated that it computed the average activity cost by taking the total cost for each activity and dividing it by the number of times each activity occurred.

[87] NASD Regulation stated that it charted the activities and their costs sequentially as they likely would occur in a case to produce a hypothetical cumulative cost at each major stage of a case.

[88] NASD Regulation stated that its analysis takes into account that some activities (processing motions, for example) will occur several times in a case. In addition, the costs of some activities (notably, holding hearings) vary greatly so that, although it is possible to establish an average cost for the activity, the cost of the activity in a particular case could be substantially higher or lower than the average. Finally, NASD regulation states that in its experience, the cost of some activities tends to vary by the amount in dispute, with larger cases tending to cost more to administer at certain stages than smaller cases. It believes that the cost variance may result from the increased contentiousness of the litigants when there are larger damages in dispute as well as from the fact that there are sometimes more parties involved in cases where large amounts are in dispute.

[89] While its budget figures project that the proposed filing and hearing session fees may pay for approximately 68% of its direct costs of administering cases, NASD Regulation's actual experience with revenue received during the year suggests that the fees may pay approximately 50% of the direct costs. The proposed filing and hearing session fees would not pay for NASD Regulation's general costs for administering the arbitration department, including costs for arbitrator recruitment and training, computer systems, office space, senior management, and legal services. *See* letter from Elliott Curzon, Assistant General Counsel, NASD Regulation, to Robert A. Love, Special Counsel, Division of Market Regulation, Commission, dated June 4, 1998.

[90] According to the NASD, in 1996 the cost of the dispute resolution program exceeded fee revenue by $11.3 million. For 1997, even with the implementation of increases in the member surcharge and an increase in revenue due to increases in the arbitration caseload, the cost exceeded revenue by $14.9 million. For 1998, the cost of the program was expected to exceed revenue by $6.1 million (this was assuming the proposed changes were approved and implemented by the beginning of the year; it also excludes, however, the member process fee, which was implemented to cover this gap). The costs associated with particular cases, however, fall along a wide spectrum depending on the nature of the case. Cases that are settled shortly after being filed usually cost little to administer. Cases that involve numerous and complex issues, numerous pre-hearing rulings and conferences with the arbitrators, lengthy hearings and, finally, an award are more costly to administer than other cases. The Office has also found that the larger the amount in dispute, the more costly the case is to administer because there are usually more parties involved (which makes communication more costly and time-consuming), there are more motions and other disputes to resolve, and pre-hearing conference and hearing logistics are more complicated. This wide spectrum of costs is the reason that the Office imposes graduated fees in two stages: filing fees and forum fees (the latter are partly prepaid through hearing session deposits).

fee increase (to cover direct costs) as applied to those claims that solely involve industry parties is consistent with the SRO rules to resolve industry disputes outside the court system, through the arbitration process.[91]

The proposed new filing fees range from $25 to $600 for public investors. The average increase is 50% in most categories. The largest filing fee increases are in cases where the claims are for $1 million or more.[92] There is no increase in the $1,000 to $10,000 categories. The Commission believes that these increases are reasonable because they are designed to require that public investors pay no more than the average direct costs incurred by NASD Regulation to provide arbitration services to the parties. Moreover, the arbitrators in their award may determine that a respondent must reimburse an investor for any filing fee it has paid.[93]

The amount of the hearing session deposit increases are also reasonable. The resulting hearing session deposits are graduated from a relatively low level for cases in lower brackets so as to not discourage public investors from seeking relief, up to the projected average cost of conducting hearings in the higher brackets.[94] Under the proposal, the hearing session deposit will be the same for claims filed by public investors and members. The hearing session deposit, and by extension the hearing session fees, are designed not to exceed the NASD Regulation's actual costs. According to the proposal, these costs are, on average, approximately the same regardless of who the parties are, even if they may vary by the amount in dispute or the number of parties involved. It is these average direct costs for providing a hearing (including arbitrator compensation and a hearing room, for example) that are paid for with these fees. In addition, the fees are not automatically imposed on either party.

The proposed rule change also provides for the equitable allocation of these filing and hearing session fees. Under NASD Rule 10332(c) governing the assessment of fees, which remains unchanged by this rule filing, ''[t]he arbitrators, in their awards, shall determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees.'' Under the rule, arbitrators may apportion forum fees among the parties, or may assess all of them against one party or the other. Under the rule, the arbitrators also may determine not to assess some or all of the fees, in which case NASD Regulation would have to absorb the costs of the proceeding. Under its rule structure, the only fee NASD Regulation is assured that it does not have to return to the parties is the initial filing fee.

Significantly, NASD Regulation has stated it will waive the initial filing fee and hearing session deposit at the time of filing if a party can demonstrate financial hardship.[95] It is the Commission's understanding and expectation that NASD Regulation will make known to potential claimants, especially investors, that there can be a financial hardship waiver of the filing fee and initial hearing session deposit. The Commission also understands that the procedure for filing a request for a waiver will be clear to claimants. After the initial filing fee and hearing session deposit are paid or waived, the arbitrators in a given case have the discretion to require additional hearing session fee deposits. In a case where the NASD Regulation has waived the initial filing fee due to financial hardship, it would seem improvable that an arbitrator would require the claimant to pay hearing session fee deposits. (Conversely, an arbitrator could well conclude not to require additional hearing session fee deposits on financial hardship grounds even where NASD Regulation staff had refused to waive the filing fee and initial hearing session deposit.) Because the financial hardship waiver is important to the Commission's finding that the proposed fee increases are equitable, the Commission plans to monitor closely NASD Regulation's administration of the waiver process. Further, NASD Regulation states that it takes financial hardship into account when deciding whether to pursue collection action against a party who has been ordered to pay fees, but has failed to do so.

Arbitrators are charged with making fee assessment decisions after consideration of whether a party substantially prevailed, or engaged in dilatory or unreasonable conduct. Arbitrators, who are entrusted with resolving many other difficult issues involving the parties, also are capable of resolving the equitable allocation of these increased fees.[96] NASD Regulation stated in conjunction with this proposal that it now advises arbitrators of the dollar amount of fees that may be assessed under the fee schedules against the parties so that they clearly understand the consequence to all parties of fee allocations based upon a percentage. NASD Regulation also has stated that it is revising its arbitrator training to clarify issues and factors arbitrators should consider in assessing forum fees, in order to promote fair fee assessments. Moreover, the overall fee structure continues to provide that the arbitration program is subsidized by the NASD and its members.[97]

Some commenters argue that the fee increases in the proposed rule change are inconsistent with the Act because some investors may be deterred by the fees from bringing claims to arbitration. The Commission understands that investors will weigh any increase in the fees as part of their consideration whether to file an arbitration claim. As the Commission has stated previously, arbitration fees ''should not be permitted to operate in a manner that weighs too heavily on individual parties or serves as a disincentive to pursuing the redress of investors' grievances against broker-dealers or their

[91] *See, e.g.,* NASD Rule 10201.

[92] In the $3 million to $5 million category, the increase is 140%; in the $1 million to $3 million, $5 million to $10 million, and over $10 million categories, the increase is 100%.

[93] NASD Rule 10332(c).

[94] NASD Regulation's projected average cost to provide hearings in 1998 is approximately $1,200 per hearing session. This is based upon NASD Regulation's activity-based costing study, described more fully in the notice of the proposed rule change. *See* Securities Exchange Act Release No. 39346 (November 21, 1997), 62 FR 63580 (December 1, 1997). The activities used in computing this cost include arbitrator expenses and compensation, hearing room expenses, expenses of keeping a record, and staff work and expenses. NASD Regulation states that the Office's experience also shows that the costs of conducting hearings vary as the amount in dispute and the number of parties involved increase. In many cases, staff attorneys may need to attend some or all of the hearing sessions, staff coordination of logistics may be more difficult and complicated, and staff communication with the parties may be more involved and time-consuming.

[95] Arbitrators also may order a respondent to reimburse a claimant for the amount of the filing fee paid at the beginning of the case.

[96] NASD Regulation has stated that, historically, arbitrators have assessed approximately 77 percent of the fees against member parties to arbitrations. NASD Regulation does not expect this pattern to change, but also has undertaken to monitor fee assessments.

[97] NASD Regulation states that a small number of large firms are involved in more than 50 percent of all arbitration cases, and it determined to shift member costs to these member users. The NASD's arbitration program will continue to be subsidized by member firms, but the subsidy has largely shifted from all members to member users. This subsidy comes from two separate fees imposed only on member parties to arbitration cases. In 1994, NASD Regulation began charging members a non-refundable ''member surcharge'' fee (and increased the fee in 1997) if the member or an associated person of the member was named in an arbitration proceeding. In 1998, NASD Regulation began charging a ''member process'' fee against firms involved in an arbitration as the case progresses to different phases (accordingly, a firm that is able to settle a case before a hearing would be able to avoid some of the member process fee). The fee was intended to address a projected $6.1 million deficit that would remain even with the approval of this rule proposal. *See supra* notes 39 and 90.

associated persons.'' [98] Clear procedures for waiving initial fees in cases of financial hardship and arbitrator discretion should help prevent fees from becoming too onerous for individual investors.

Set out below are three charts that compare hearing session fees under the current and proposed new fee structures. The first chart includes sample hearing session fees for larger cases, which typically are resolved by three arbitrators. The second chart includes sample hearing session fees for smaller cases, which typically are resolved by a single arbitrator. The third chart includes sample fees for smaller cases decided on the paper record.

Chart I is based largely on the sample cases set out in Exhibit 2 to the proposed rule change. It takes into account both the amount of the hearing session fees that could be assessed and the number of hearing sessions typically conducted within the bracket.

CHART I

Case dollar amount and number of hearing sessions	Hearing session fees under current rule in 1990 dollars	Hearing session fees under current rule in 1998 dollars (adjusting current fees for inflation) [99]	Hearing session fees under new rule
$30,000.01–$50,000 (four hearing sessions)[100]	$1,600	$2,008	$2,400
$50,000.01–$100,000 (four hearing sessions)	2,400	3,012	3,000
$100,000.01–$500,000 (six hearing sessions)	4,500	5,647	6,750
$500,000.01–$1,000,000 (nine hearing sessions)	6,750	8,470	10,800
$1,000,000.01–$3,000,000 (ten hearing sessions)	10,000	12,548	12,000

Chart II is based upon the fees that can be assessed for cases up to $30,000 that are decided with an in-person hearing.

CHART II

Case dollar amount [101]	Hearing session fees with one arbitrator under current rule in 1990 dollars	Hearing session fees with one arbitrator under current rule in 1998 dollars (adjusting fees for inflation)	Hearing session fees with one arbitrator under new rule
$.01–$1,000	$30	$38	$50
$1,000–$2,500	50	62	100
$2,500.01–$5,000	200	250	250
$5,000.01–$10,000	400	502	500
$10,000.01–$25,000 [102]	600	752	900
$25,000.01–$30,000 [103]	900	1,128	1,350

Chart III is based upon sample cases decided on the paper record without an oral hearing. This option, which is available for cases up to $25,000, is the least expensive option for resolving disputes.

CHART III

Case dollar amount	Fees for cases decided on the paper record under current rule in 1990 dollars	Fees for cases decided on the paper record under current rules in 1998 dollars (adjusting fees for inflation)	Fees for cases decided on the paper record under new rules
$.01–$1,000	$15	$19	$25
$1,000.01–$2,500	25	31	50
$2,500.01–$5,000	75	94	125
$5,000.01–$10,000	75	94	250
$10,000.01–$25,000	NA	NA	300
$25,000.01–$30,000	NA	NA	NA

[98] Securities Exchange Act Release No. 26805 (May 10, 1989), 54 FR 21144 (May 16, 1989).

[99] Current fees, adjusted for inflation, are added here as a point of reference. They were not included in the NASD's proposed rule change.

[100] Under the new fee structure, parties with disputes in this bracket will be able to agree to have one arbitrator decide their case. If one arbitrator is used, the hearing session fee would be $1,800.

[101] Two hearing sessions are assumed for all cases up to $25,000, and three hearing sessions are assumed for cases between $25,000.01 and $30,000. *See* letters from John M. Ramsey, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 18, 1998 and September 10, 1998.

[102] If three arbitrators were used, the current fee for two hearing sessions would be $800, the current fee adjusted for inflation would be $1,004. Three person panels are not typically available under the new fee structure for cases below $25,000.01.

[103] If three arbitrators were used, the current fee for three hearing sessions would be $1,200, the current fee adjusted for inflation would be $1,506, and the fee under the new rule would be $1,800.

The existing fee schedule was established in 1990.[104] Inflation has risen 25% since that time.[105] Moreover, the NASD's arbitration facilities have grown in the past eight years since the fees were last revised.[106] In dollar amounts, the additional cost to investors with smaller claims as a result of the fee increased would not be substantial. For large claims, a significant amount of money already is at stake in the litigation and the amounts that the arbitrators may assess against one or both of the parties is not so large that it should affect the decision to pursue claims, especially when the arbitrators assess fees only after fully considering each party's position. Again, the NASD's financial hardship fee waiver process should help assure that investors do not forego their claims solely on account of the fee increase.

Comments challenging the efficiency and quality of arbitration administered by the NASD reinforce the importance of the work undertaken by the NASD's Arbitration Policy task Force and its NAMC, as well as the Commission's own oversight of the arbitration process.[107] These criticisms, however, do not refute NASD Regulation's demonstration that it expends significant amounts of money administering its arbitration program that have not in the past been matched by fee revenue, and that these fee increases are directed at recovering the direct costs of administering the forum. More importantly, they also are outweighed by the fact that arbitrators make fee allocations after a hearing on the record.

Some commenter's other broad attacks against the proposed fee are equally unpersuasive. As noted above, several commenters, citing *McMahon*, questioned whether the fee increases would prevent claimants from being able to vindicate their rights in arbitration. Because the fee increases will not affect the substantive rights of claimants, and because NASD Regulation has a fee waiver process for claimants who have a financial inability to pay the fees, the Commission sees no conflict with *McMahon*.[108] As to the comments regarding whether arbitrators require periodic payments of hearing session deposits and how arbitrators allocate fees in their awards, NASD Regulation states it is revising its arbitrator training to clarify the issues and factors arbitrators should consider in assessing forum fees, in order to ensure that those fees are assessed fairly.[109] It is clear that determinations about whether to request additional hearing session deposits from the parties during a case are at the sole discretion of the arbitrators.

In conclusion, the proposed fee increases are reasonable because they do not exceed the direct average cost of resolving a dispute. Moreover, the NASD's financial hardship fee waiver process should help assure that investors do not forego filing their claims solely on account of the fee increase. Finally, the proposed fee increases are equitably allocated because it is the arbitrators who decide who will pay them in any individual case.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[110] that the proposed rule change (SR–NASD–97–79) is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4955 Filed 2–26–99; 8:45 am]

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[104] Securities Exchange Act Release No. 28086 (June 1, 1990), 55 FR 23493 (June 8, 1990).

[105] Consumer Price Index, All Urban Consumers, All Items, U.S. Department of Labor, Bureau of Labor Statistics.

[106] For example, 3,617 cases were filed in 1990, and 5,997 cases were filed in 1997. To administer these cases, NASD Regulation has developed a new computer system to process the selection of arbitrators under a list selection system for selecting arbitrators that the Commission recently approved. *See supra* note 53.

[107] The NASD has reported that it has implemented steps to improve efficiency, including the early selection of arbitrators. The increase in arbitrator honoraria proposed in this filing is part of NASD Regulation's effort to attract and retain qualified arbitrators. Moreover, the Commission has recently approved NASD Regulation's list selection method for choosing arbitrators, which may be preferred by investors. *See* Securities Exchange Act Release No. 40555 (October 14, 1998), 63 FR 56670 (October 22, 1998). NASD Regulation also has reported to the Commission initiatives to improve case processing and administration by, among other things, upgrading its computerized case tracking system and hiring additional staff.

The comments that arbitration fees are higher than court fees do not on their own indicate that the proposed fees are not reasonable. Litigation is likely to involve other significant costs associated with depositions and attorney fees that would likely be lower in an arbitration setting.

[108] We also do not agree with the commenters' statements that the fee increases would raise equal protection or due process concerns. A threshold requirement of any constitutional claim is the presence of state action. *See, e.g., Lugar* v. *Edmondson*, 457 U.S. 922, 936 (1982). A government agency's oversight or approval of a regulated entity's business and operations does not constitute state action. *See, e.g., Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 357 (1974). Courts that have considered the issue have concluded that the NASD's operation of an arbitration forum does not constitute state action simply because the Commission reviews and approves arbitration rules. *See, e.g., Cremin* v. *Merrill Lynch Pierce Fenner & Smith, Inc.*, 957 F. Supp. 1460, 1465–1470 (N.D. Ill. 1997).

[109] *See* NASD Response One.

[110] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41084; File No. SR–NYSE–98–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 104.10 to Require Floor Official Approval for Destabilizing Odd-Lot Transactions

February 22, 1999.

I. Introduction

On October 16, 1998, the New York Stock Exchange, Inc. (''NYSE'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 104.10 by deleting the odd-lot exception. The proposed rule change was published for comment in the **Federal Register** on December 4, 1998.[3] On November 20, 1998, the NYSE submitted a letter to the Commission clarifying the treatment of odd-lot offsets, the substance of which was incorporated into the notice and this order.[4] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange is proposing to amend NYSE Rule 104.10(b)(i) by eliminating paragraph (C), which provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset position acquired by the specialist in executing odd-lot orders in the same day.

NYSE Rule 104 governs specialists' dealings in their specialty stocks. In particular, NYSE Rule 104.10(6) describes the manner in which a specialist may liquidate or increase his or her position in a specialty stock. In general, the rule requires such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40711 (November 25, 1998), 63 FR 67160.

[4] Letter from Agnes Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 20, 1998 (''NYSE Letter'').

transactions to be effected ''in a reasonable and orderly manner'' in relocation to the overall market. The rule also requires the market in the particular stock and the adequacy of the specialist's position to meet the reasonably anticipated needs of the market. NYSE Rule 104.10(6)(i)(A) provides that specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick (destabilizing ticks), only if the transaction is reasonably necessary in relation to the specialist's overall position in the stock and if the specialist obtains Floor Official approval. Floor Official approval provides an independent review of these destabilizing transactions for compatibility with the reasonableness test.

NYSE Rule 104.10(6)(i)(C) provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset positions acquired by the specialist in executing odd-lot orders on the same day. Odd-lot orders are executed throughout the day in the odd-lot system against the specialist in that stock. Periodically, the specialist receives an automated notification of the net amount of odd-lots that have been executed against his or her position. The specialist can then offset these odd-lot transactions by buying or selling for his or her own account.

The basis for the exception was that these odd-lot offsets would not have an impact on the market as a whole. However, there has been a marked increase in the volume of odd-lot transactions in the last several years [5] and, as a result, an increase in specialist offset transactions. The Exchange believes that odd-lot offsets should be treated as other liquidating transactions and be netted with round lot transactions. All destabilizing transactions would require Floor Official approval pursuant to Exchange Rules.[6] Therefore, the Exchange is proposing to delete the exception for odd-lots in paragraph (C).

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In Particular, the Commission believes the proposal is consistent with the requirements of sections 6(b)(5) and 11(b) of the Act.[8] Section 6(b)(5) provides, in part, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Section 11(b) allows exchanges to promulgate rules relating to specialists to maintain fair and orderly markets.

Pursuant to Rule 11b–1(a)(2)(ii) under the Act, the rules of a national securities exchange must provide, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market.[9] NYSE Rule 104.10(6) regulates specialist transactions on the Exchange. Currently, odd-lot transactions are excluded from Exchange Rule 104.10(6)(i)(A), which regulates when specialists may trade, for their own account on destabilizing ticks. These transactions were excluded from the provisions of Rule 104.10(6)(i)(A) because odd-lot volume was relatively small and presumably did not have significant market impact.

The Exchange represents that odd-lot volume has increased significantly.[10] As a result, odd-lot destabilizing transactions could impact the market price of a security. The Commission believes that specialist purchases and sales on destabilizing ticks should be effected in a reasonable manner because of their potential destabilizing effect on the market. Under the proposed rule change, these destabilizing odd-lot transactions would be governed by NYSE Rule 104.10(6)(i)(C), which permits such transactions if they are reasonably necessary and the specialist obtains the prior approval of a Floor Official.[11] The Commission believes that it is reasonable and consistent with the Act to subject destabilizing odd-lot transactions to the same level of scrutiny currently applicable to other destabilizing transactions. The proposal should help ensure that odd-lot destabilizing transactions are effected in a manner consistent with the maintenance of fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–98–34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4960 Filed 2–26–99; 8:45 am]

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[5] Odd-lot volume exceeded 1 billion shares on the NYSE in 1997, an 87% increase from 1994. Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE, and Robert B. Long, Attorney, Division, Commission, on October 23, 1998.

[6] *See* NYSE Letter, *supra* note 4.

[7] In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5) and 78k(b).

[9] 17 CFR 240.11b–1(a)(2)(ii).

[10] *See* telephone conversation discussed in note 5.

[11] *See* NYSE Rule 104.10(6)(i)(A).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41089; File No. SR–OCC–98–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Closing Prices in Expiration Processing

February 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 3, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise OCC Rule 805 with respect to closing prices in expiration processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's clearing members have requested that expiring options be subject to exercise-by-exception (''ex-by-ex'') processing[3] even if no trading takes place on the trading day before expiration. OCC's clearing members have advised OCC that it would be easiest for them operationally if OCC used the last sale price for the underlying security for the ex-by-ex process rather than remove the option from the process. Accordingly, under the proposed rule change OCC will use the last sale price for the underlying security to determine the closing price even if the price reflects sales that occurred prior to the last trading day before expiration.

In addition, the proposed rule change allows OCC to fix a closing price as it deems appropriate where there is no available last sale price (*e.g.*, because the underlying security is not being traded), where the last sale price is stale (*e.g.*, because there have been no transactions in the underlying security for a lengthy period), or under other similar circumstances. This will allow OCC to use the last reported sales price generally but also will allow OCC to obtain prices from other appropriate sources that provide a basis for determining the market value of the underlying security.

The proposed rule change will also preserve OCC's ability to not fix a closing price in situations where it believes that it cannot derive a correct market price for the underlying security and to remove it from ex-by-ex processing. OCC has informed the Commission that if it fixes a closing price or determines to remove an underlying security from the ex-by-ex process, it will promptly notify its clearing members through an information memorandum or other communication medium so the clearing members can take appropriate action.

Finally, revised Rule 805 will allow OCC to refer to such markets as it designates for use in the ex-by-ex process rather than only referring to the underlying security's primary market. OCC believes that the term primary market may in some cases (now or in the future) be unclear.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[4] and the rules and regulations thereunder in that it promotes the prompt and accurate clearance and settlement of equity and index options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because it should increase the number of options that are subject to the efficiencies of ex-by-ex processing. As a result, the proposed rule change should facilitate the prompt and accurate clearance and settlement of options transactions by providing promptness and precision in the exercise of in-the-money options if no trading takes place in the underlying security on the day before expiration.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should immediately increase efficiency in processing expiring options that are in-the-money if no trading takes place in the underlying security on the trading day before expiration.

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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–14 and should be submitted by March 22, 1999.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–OCC–98–14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

[FR Doc. 99–4962 Filed 2–26–99; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by OCC.

[3] OCC's ex-by-ex procedures presume that a clearing member desires to exercise all options that are in-the-money by a specified threshold. According to OCC, the ex-by-ex processing procedures have been developed solely as an administrative convenience for its clearing members (*See* Interpretation .02 to Rule 805).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41083; File No. SR–PCX–98–57]

Self-Regulatory Organization; Pacific Exchange, Inc.; Order Approving Proposed Rule Change to Amend Equity Floor Procedure Advice 2–C To Remove an Exception Regarding Trade Reporting Responsibilities

February 22, 1999.

I. Introduction

On November 6, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Equity Floor Procedure Advice 2–C to remove an exception regarding trade reporting responsibilities. The proposed rule change was published for comment in the **Federal Register** on January 15,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

1999.[3] The Commission received no comments on the proposal.

II. Description of the Proposal

Currently, PCX Rule 5.12 states that ''The seller shall be responsible for transactions being promptly recorded by the floor reporters.'' This requirement is subject to two exceptions in Equity Floor Procedure Advice 2–C, the second of which states that ''Transactions in local issues in which the specialist acts as the buyer an the seller is on the opposite trading floor[4] are to be promptly reported to the tape by the specialist. The seller is required to submit a 'goldenrod' ticket[5] to report the transaction for clearing purposes only.''

The PCX proposed to delete the second exception to Rule 5.12 in Equity Floor Procedure Advice 2–C so that the general requirement in Rule 5.12 of seller responsibility shall apply. The Exchange believes that the conditions underlying the original exception have changed and that there is no longer any reason to exempt these types of transactions from the basic requirement. The Exchange believes that electronic links between the PCX's two trading floors allow sellers to record promptly transactions in local issues in which the specialist acts as the buyer even when the seller is on the opposite trading floor.[6] Deleting this exception will make the obligation to report transactions consistent with the general requirement that sellers report the trades.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[7] and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act.[8] Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.[9] In section 11A(a)(1)(C)(iii), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to transactions in securities.[10]

By deleting the second exception to PCX Rule 5.12, the Exchange is proposing that transaction in local issues in which the specialists acts as the buyer and the seller is on the opposite trading floor are to be promptly reported to the tape by the seller. The PCX maintains that the second exception provided in Equity Floor Procedure Advice 2–C was designed to facilitate the proper recording of transactions when communications between the two trading floors was less efficient (under the exception, a trade is required to be reported where it was executed). According to the PCX, electronic links between the Exchange's two trading floors should ensure that the seller is aware of the execution in a timely manner and, therefore, able to assume responsibility for transactions being promptly recorded by the floor brokers.[11]

In light of enhanced technology between PCX's Los Angeles and San Francisco trading floors, the Commission believes that subjecting transactions in local issues in which the specialist acts as the buyer and the seller is on the opposite trading floor to the requirements of the general rule, Rule 5.12, is consistent with the provisions of the Act discussed above because imposing the transaction reporting requirements should promote the rapid and efficient reporting of transactions to the tape by applying those requirements generally to sellers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–PCX–98–57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4961 Filed 2–26–99; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 40888 (January 6, 1999), 64 FR 2694.

[4] The PCX maintains trading floors in two locations, Los Angeles and San Francisco.

[5] A goldenrod ticket is a ticket that is printed on gold colored paper. It is used for clearing transactions. If a trade is properly reported to the tape on a pink ticket, but the parties have not been identified, a goldenrod ticket will be issued with the parties have been identified for clearing purposes. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on February 5, 1999.

[6] *Id.*

[7] In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78(k)–l(a)(1)(C)(iii).

[11] *See telephone conversation discussed in note 5 above.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41081, File No. SR–Phlx–98–46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Amending Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution System, Raising the Minimum Order Delivery Requirement for Specialists from 1099 Shares to 2099 Shares

February 22, 1999.

I. Introduction

On November 12, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 229 raising the minimum order delivery requirement for specialists from 1099 shares to 2099 shares on the Exchange Automatic Communication and Execution System (''PACE'').[3] Notice of the proposed rule change appeared in the **Federal Register** on January 7, 1999.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Specialists are required to accept orders sent by members for automatic execution on the PACE system up to the minimum order delivery requirement set forth in Phlx Rule 229. The Exchange proposed to amend Phlx Rule 229 to raise the minimum order delivery requirement for specialists from 1099 shares to 2099 on the PACE system. Thus, specialists will be required to accept PACE orders of up to 2099 shares.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor. *See* Phlx. Rule 229.

[4] *See* Securities Exchange Act Release No. 40842 (December 28, 1998), 64 FR 1061.

Phlx Rule 229, Supplementary Material .06 through .10 previously required specialists to accept orders of 1099 shares in the following situations: (i) Section 229.06—market orders entered before the New York market opening; (ii) Section 229.07(b)—market orders entered after the New York market opens; and (iii) Sections 229.10(b)–(c)—the method of execution given to PACE orders. The Exchange proposed to increase the minimums contained in these sections to 2099 shares. Under the proposal, specialists will continue to be able to raise their own minimum delivery requirements for individual stocks to level higher than the proposed minimum of 2099 shares.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes the proposal is consistent with Section 6(b)(5), which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[6] The Commission believes that the proposed 2099 share minimum guaranteed order delivery size is reasonable and may benefit investors by providing them with the flexibility to deliver large sized orders to the specialist for automatic execution through PACE. The Commission further notes that specialists may voluntarily increase the minimum guaranteed order delivery size on an issue by issue basis.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–98–46) is approved.

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4956 Filed 2–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41079; File No. SR–Phlx–98–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Assessment of a Fee on Persons Who Unsuccessfully Contest an Options Ruling Involving a Trading Dispute

February 22, 1999.

I. Introduction

On August 26, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change assessing a fee on persons who unsuccessfully contest an options ruling involving a trading dispute. Several amendments were thereafter received.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By letter dated August 31, 1998, the Exchange revised the effective date of its proposal. *See* letter from Linda S. Christie, Counsel, Phlx, to Mandy Cohen, Special Counsel, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Next, the Exchange (a) clarified that the proposed fee would apply to frivolous appeals of option floor decisions only, and (b) made conforming changes to Rule 124 and Options Floor Procedure Advice F–27. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated November 18, 1998 (''Amendment No. 2''). In its December 9, 1998 letter, the Exchange clarified that (a) the Options Committee approved the changes made by Amendment No. 2, and (b) the amendment dated November 18, 1998, is Amendment No. 2. In addition, the Phlx made minor technical changes to the rule language. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission (''Amendment No. 3''). The Exchange also made technical changes to its proposed rule language and further clarified that the proposed rule change amends only Advice F–27 for options and not for equities. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated December 23, 1998 (''Amendment No. 4''). In a final amendment, the Exchange made technical changes to its proposed rule change. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission dated January 12, 1999 (''Amendment No. 5'').

The proposed rule change, as amended by Amendments No. 1 through 4, was published for comment in the **Federal Register** on January 22, 1999.[4] No comments were received on the proposal. This order approves the approval.

II. Description

The Exchange proposes to amend Phlx Rule 124 and Options Floor Procedure Advice F–27, Floor Official Rulings, to assess a $250.00 fee on persons who unsuccessfully contest an options ruling imposed under Phlx Rule 124, upon a finding by a Rule 124(d) review panel that the appeal is frivolous.

III. Discussion

After careful review the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission believes that the proposal is consistent with the requirements of section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and remove impediments to and perfect the mechanism of a free and open market and a national market system by discouraging unwarranted appeals that may slow the appeals process, and allowing swifter access to the appeals process by bona fide claimants.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–98–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4957 Filed 2–26–99; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 40936 (January 12, 1999), 64 FR 3581. Since Amendment No. 5 was technical in nature, it does not require publication for notice and comment.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''ProNet''.

Form No: N/A.

Description of Respondents: Small Businesses.

Annual Responses: 200,000.

Annual Burden: 3,333.

Comments: Send all comments regarding this information collection to, Oliver Snyder, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW, Suite 8800, Washington, DC 20416. Phone No: 202–205–7650.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–4988 Filed 2–26–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

MEETING: New Markets Lending Company; Pilot Program

AGENCY: Small Business Administration.

ACTION: Public Meeting on SBA's Proposed New Markets Lending Company. (NMLC) pilot loan program for SBA loans made under Section 7(a) of the Small Business Act.

SUMMARY: The SBA recognizes that many segments of the small business community continue to have difficulty accessing capital in the commercial loan markets. To assist these New Markets small businesses, the Agency plans to develop and test several innovative new programs and initiatives designed to more efficiently and effectively deliver SBA financing to these markets. The proposed NMLC program is one of these initiatives. SBA envisions the program as a limited term, limited participation SBA pilot program under which the Agency will select approximately ten unique, non-depository lending institutions to make SBA guaranteed loans targeted to New Markets small businesses. This pilot will be part of the Agency's 7(a) loan program, which provided guaranties on loans to approximately 42,000 small businesses for about $9 billion in FY 1998.

SBA expects to define New Markets under the program as current and prospective small businesses owned by minorities, women, veterans, and persons with disabilities, who are underrepresented in the population of business owners compared to their representation in the overall population, as well as businesses located or locating in Low and Moderate Income urban and rural areas.

SBA is continuing to develop criteria for participation in the program, but participants are expected to be selected competitively using criteria that may include, among others, the following:

Management Capability

The applicant entity or its management team must demonstrate appropriate experience in managing a loan underwriting, loan making, loan collection, and loan liquidation operation;

Adequate Capitalization

A minimum capitalization, including leverage limitations to reflect both balance sheet and off balance sheet assets, will be required. (A variety of financing structures will be considered, but a minimum equity injection of $3–$5 million is being considered);

Commitment to Borrower's Development

Applicant must demonstrate a continuing commitment to the development of the borrower's management capabilities; and,

Public Purpose

Participants must aggressively and continuously target a range of SBA defined New Markets communities.

The Agency's monitoring and oversight of NMLCs will include annual safety and soundness examinations, periodic reviews of lender effectiveness in reaching targeted markets, and compliance reviews required of other SBA lenders. SBA will develop program guidelines and procedures shortly and expects to implement the program by October 1, 1999.

HEARING: SBA will hold a public hearing to obtain comments and suggestions from the public to assist in developing the NMLC concept. Interested parties will be given a reasonable time for an oral presentation and may submit written statements of their oral presentation in advance. If you wish to make a presentation, please contact Ms. Lula M. Gardner at (202) 205–6485 at least five days before the hearing. If a large number of participants desire to make statements, a time limitation on each presentation will be imposed.

Members of the hearing panel may ask questions of the speaker, but speakers will not be allowed to question each other. Please submit written questions in advance to the Chair. If the Chair determines them to be relevant, the Chair will direct them to the appropriate panel member.

DATES: March 11, 1999, 1:30 p.m. to 4:30 p.m.

LOCATION: SBA's Washington District Office Conference Room, 1110 Vermont Avenue, NW, Washington, DC 20005.

POSSIBLE ISSUES: The SBA requests that speakers address the following issues:

- Can this concept help increase SBA lending to New Markets?
- How should SBA select NMLC participants?
- Should the SBA require that a minimum percentage of lending by each NMLC be directed to New Markets? If so, what should that minimum percentage be?
- How many firms should be allowed to participate?
- What, if any, time limit should be established for the program?
- What level of capitalization should SBA require of NMLC pilot participants?
- What loan volume should SBA expect from NMLCs?
- What oversight should SBA apply to this program?
- Should SBA give these firms PLP and/or SBAExpress authority?
- What incentives should SBA consider to encourage these firms to lend in non-traditional markets?
- What support should SBA provide lenders to address these markets?
- What will be the likely impact of this program on existing SBA lenders?
- In lieu of the proposed NMLC program, should SBA open the SBLC program to additional participants?

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Chief, Pilot

Operations, Office of Financial Assistance, (202) 205–6656.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 99–4864 Filed 2–26–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2995]

Office of the Chief of Protocol; 60-Day Notice of Proposed Information Collection: Notifications of Appointment, Change or Termination of Diplomatic, Consular or Foreign Government Employees, Currently Forms DSP–110, DSP–111, DSP–112, DSP–113, DSP–114, DAP–115

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Continuation of Existing Collection.

Originating Office: S/CPR.

Title of Information Collection: Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

Frequency: On occasion.

Form Number: DSP–110.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 2,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 850.

Title of Information Collection: Notification of Appointment of Foreign Government Employee.

Frequency: On occasion.

Form Number: DSP–111.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 2,125.

Title of Information Collection: Notification of Appointment of Honorary Consular Officer.

Frequency: On occasion.

Form Number: DSP–112.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 200.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 80.

Title of Information Collection: Notification of Change, Identification Card Request.

Frequency: On occasion.

Form Number: DSP–113.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 5,000.

Average Hours Per Response: 9 minutes.

Total Estimated Burden: 600.

Title of Information Collection: Notification of Dependents of Diplomatic, Consular and Foreign Government Employees.

Frequency: On occasion.

Form Number: DSP–114.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 7,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 840.

Title of Information Collection: Notification of Termination of Diplomatic, Consular or Foreign Government Employment.

Frequency: On occasion.

Form Number: DSP–115.

Respondents: Foreign government representatives.

Estimated Number of Respondents: 6,000.

Average Hours Per Response: 10 minutes.

Total Estimated Burden: 720.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Lawrence Dunham, U.S. Department of State, Washington, DC 20520.

Dated: February 20, 1999.

Frank M. Machak,

Bureau DAS, Deputy Assistant Secretary, Bureau of Administration.

[FR Doc. 99–5006 Filed 2–26–99; 8:45 am]

BILLING CODE 4710–20–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1512).

TIME AND DATE: 9 a.m. (CST), March 3, 1999.

PLACE: Tennessee National Guard Armory, 2398 Industrial Park Road, Pulaski, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meetings held on January 27, 1999.

New Business

C—Energy

C1. Fixed-price contract with Roberts & Schaefer Company to design, manufacture, deliver, install, and test a railroad car unloading and coal blending facility for Kingston Fossil Plant.

C2. Contract with G–UB–MK Constructors for modification and supplemental maintenance work at TVA's Eastern Region fossil and hydro power generation facilities.

C3. Extension of an existing delegation of authority to the Senior Vice President of Procurement, based on the recommendations of the Chief Nuclear Officer, to enter into individual contracts of up to $15 million each for uranium to be used in TVA's nuclear plants through fiscal year 2005.

C4. Approval to execute an agreement with The University of Tennessee at Knoxville to cover all future activities being conducted by the respective TVA business units.

Information Items

1. Approval of recommendations resulting from the 63rd Annual Wage Conference, 1998—Teamster Wage Rates and Construction Project Agreement Subsistence Pay.
2. Approval of Amendment to the Trust Agreement between the Board of Directors of the TVA Retirement System and Mellon Bank, N.A.
3. Approval of an agreement between Weekend Academy, Inc., and TVA.
4. Approval of the Charter for the Land Between The Lakes Advisory Committee and designating the Chief Operating Officer to complete the chartering process.

5. Abandonment of easement rights over a portion of the West Point-Macon transmission line right-of-way in Lowndes County, Mississippi.

6. Grant of a permanent easement for railroad purposes to Stewart County and Houston County, Tennessee, affecting approximately 3.5 acres of the Cumberland Fossil Plant site (Tract No. XTCCSP–1RR).

7. Nineteen-year commercial recreation lease to Lakeview Boatdock, Inc., on Norris Lake in Union County, Tennessee (Tract No. XNR–906L).

8. Sale by the United States Department of Agriculture, Forest Service, of approximately 0.98 acre of former TVA land on Fontana Lake in Graham County, North Carolina (Tract No. XTFR–2).

9. Grant of a permanent public recreation easement for a public park to Kingston, Tennessee, affecting approximately 2 acres of land on Watts Bar Lake in Roane County, Tennessee (Tract No. XTWBR–139RE).

10. Land exchange by the United States Department of Agriculture, Forest Service, affecting approximately 53 acres of former TVA land on Fontana Lake in Swain County, North Carolina (Tract No. XTFR–3).

11. Approval relating to the execution of ISDA Master Agreements and related confirmations with various counterparties for the purpose of managing TVA's debt and delegation of authority to the Chief Financial Officer and the Vice President and Treasurer for either to enter into ISDA Master Agreements and related confirmations on behalf of TVA and authorizing certain TVA officers to take further actions relating thereto.

12. Approval of a natural gas services policy.

13. Amendment to the TVA Business Practice entitled, ''The Acquisition of Fossil Fuels and Related Transportation Services.''

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 898–2999.

Dated: February 24, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–5134 Filed 2–25–99; 3:59 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Aerospace Equipment (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee (ISAC–14) will hold a meeting on March 8, 1999, from 9:15 a.m. to 3:00 p.m. The meeting will be open to the public from 9:15 a.m. to 12:00 noon and closed to the public from 12:00 noon to 3:00 p.m.

DATES: The meeting is scheduled for March 8, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Susan Toohey, Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. NW, Washington, DC 20508, (202) 395-6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on March 8, 1999 from 9:15 a.m. to 3:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:00 noon to 3:00 p.m. The meeting be open to the public and press from 9:15 a.m. to 12:00 noon, when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–4964 Filed 2–26–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 1998 [FR 63, page 69708–69709].

DATES: Comments must be submitted on or before March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Sylvia Barney, (202) 366–6680 and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Federal Transit Administration (FTA)

Title: Customer Service Surveys.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2132–0559.

Form(s): N/A.

Affected Public: State and local government, Public Transit Operators, Metropolitan Planning Organizations (MPO's), transit constituents, Transit manufacturers, and Private transit operators.

Abstract: Executive Order 12862, ''Setting Customer Service Standards,'' requires FTA to identify its customers and determine what they think about FTA's service. The surveys covered in this request for a blanket clearance will provide FTA with a means to gather data directly from its customers. The information obtained from the surveys will be used to assess the kind and quality of services customers want and

their level of satisfaction with existing services. The surveys will be limited to data collections which solicit voluntary opinions and will not involve information that is required by regulations.

Total Estimated Annual Burden Hours: 911.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FTA Desk Officer.

Comments are Invited on

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on February 23, 1999.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 99–4944 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 2, 1998, [63 FR 66627].

DATES: Comments must be submitted on or before March 31, 1999.

FOR FURTHER INFORMATION CONTACT: Doris Lansberry, Office of the Chief Counsel, Maritime Administration, Room 7232,400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5712 or FAX 202–366–7485. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration (MARAD)

Title: Requirements for Establishing U.S. Citizenship (46 CFR part 355).

OMB Control Number: 2133–0012.

Type of Request: Extension of currently approved collection.

Abstract: In accordance with 46 CFR part 355, shipowners, charterers, equity owners, ship managers, etc. seeking benefits provided by statute are required to provide on an annual basis, an Affidavit of U.S. Citizenship to the Maritime Administration for analysis.

The Affidavits of U.S. Citizenship filed with the Maritime Administration will be used to determine shipowners, equity owners, ship managers, etc. compliance with the statutory requirements.

Affected Public: Shipowners, Charterers, Equity Owners, Ship Managers.

Annual Estimated Burden Hours: 1,500.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on February 22, 1999.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 99–4945 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Agreements Filed

Aviation Proceedings, Agreements filed during the week ending February 19, 1999. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5124.

Date Filed: February 19, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–AFR 0058 dated February 12, 1999, North Atlantic-Africa Expedited Reso 015n, Intended effective date: April 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–4946 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–5139]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Wednesday, March 31, 1999, from 8 a.m. to 4 p.m. and on Thursday, April 1, 1999, from 8 a.m. to 3 p.m. These meetings may adjourn early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 17, 1999. Requests to have a copy of your material distributed to

each member of the committee or subcommittee should reach the Coast Guard on or before March 12, 1999.

ADDRESSES: MERPAC will meet on both days in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Send written material and requests to make oral presentations to Commander Steven J. Boyle, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail mgould@comdt.uscg.mil. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of March 31, 1999 Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: the working group on the International Convention on the Standards of Training, Certification and Watchkeeping (STCW); the working group on the National Maritime Center/Licensing Re-Engineering Team; and the working group on the Assessment of Proficiencies as Mandated by the Amended 1995 STCW Convention. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of April 1, 1999 Meeting

Merchant Marine Personnel Advisory Committee (MERPAC)

The agenda includes the following:

(1) Introduction.
(2) Working Group Reports.
(3) Other items to be discussed:
  (a) Standing Committee—Prevention Through People
  (b) STCV developments
  (c) Improving communications with the maritime industry
  (d) Other items brought up for discussion by the committee or the public

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than March 17, 1999. Written material for distribution at a meeting should also reach the Coast Guard no later than March 17, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than March 12, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 23, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–4999 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Alaska, Department of Transportation and Public Facilities, for Anchorage International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia A. Sullivan, Federal Aviation Administration, Alaskan Region, Airports Division, AAL–600, 222 West 7th Avenue, 6#14, Anchorage, Alaska 99513, 907–271–5454.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Anchorage International Airport are in compliance with applicable requirements of Part 150, effective January 26, 1999.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Alaska, Department of Transportation and Public Facilities. The specific maps under consideration are Noise Exposure Maps (NEMs) for the existing (1997), Figure 7.1 and five-year (2002) forecast condition, Figure 7.2 in the submission. The FAA has determined that these maps for Anchorage International Airport are in compliance with applicable requirements. This determination is effective on (January 26, 1999). FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise

exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure maps and the FAA's evaluation of the made and available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Alaska Region, Airports Division, AAL–600, 222 West 7th Avenue, #14, Anchorage, Alaska 99513.

Maryellen Tuttel, Noise Program Manager, Anchorage International Airport, PO Box 196960, Anchorage, Alaska 99519–6960.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska on January 26, 1999.

Ronnie V. Simpson,

Manager, Airports Division, AAL–600, Alaskan Region.

[FR Doc. 99–4998 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket Number FHWA–99–5110]

Notice of Request for Clearance of a New Information Collection: No-Zone Campaign Assessment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to approve a new information collection related to one of its national motor carrier safety initiatives; i.e., the No-Zone campaign. The No-Zone is the area around trucks where cars disappear from the view of the truck driver into blind spots or are so close that they restrict the truck driver's ability to stop or maneuver safely. The planned collection of information from a sample of the Nation's licensed drivers will be conducted to determine the public's recognition and awareness of the FHWA's Office of Motor Carrier and Highway Safety's No-Zone campaign.

DATES: Comments must be submitted on or before April 30, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. David Longo, (202) 366–0456, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:00 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: No-Zone Campaign Assessment.

Background

The FHWA will conduct a quantitative analysis of the No-Zone campaign and its messages by developing and administering a baseline evaluation study. The study will be conducted to determine the public's recognition and awareness of the No-Zone campaign. The study will be used as a starting point from which the campaign will be evaluated at a future date. The study will quantify respondents' knowledge of truck and bus limitations; their knowledge of ''share the road'' issues; and their knowledge of the No-Zone campaign and its messages. The baseline study will assist the FHWA with future evaluations of the No-Zone campaign. It is anticipated that a sample of 4,000 respondents will be drawn in order to complete 1,100 interviews in households with telephones using a national random digit dial sample. The purpose of the No-Zone campaign is to help reduce the number of car-truck crashes, injuries, fatalities, and property loss. The campaign was initiated by the FHWA in 1994 in response to a congressional request in the Intermodal Surface Transportation Efficiency Act (ISTEA), that the FHWA ''educate the motoring public about how to safely share the road with commercial motor vehicles.'' The principal campaign goal is to increase motorists' awareness of the No-Zone campaign and its highway safety messages. This baseline study will help evaluate the impact the No-Zone campaign has on increasing motorists' awareness of the commercial motor vehicle driver visibility limitations.

Respondents: The respondents will be randomly selected adult licensed drivers. An estimated 1,100 responses will be necessary to conduct the analysis.

Estimated Burden per Response: Each response is estimated to take less than five minutes. It is planned that each respondent will be asked up to 10 specific questions concerning highway safety.

Estimated Total Annual Burden: The estimated total annual burden is 92 hours (1,100 responses x 5 minutes per response).

Frequency: This initial study will help the FHWA establish a baseline for determining the public's awareness of truck and bus limitations, ''share the road'' highway safety issues, and the No-Zone campaign's messages. The same information will be collected in 3 to 5 years to assess improvements in public awareness as a result of ''share the road'' public outreach efforts.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *:http://www.access.gpo.gov/nara*.

Authority: Pub. L. 105–78, section 2009, and Pub. L. 102–240, section 4002.

Issued on: February 22, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–4943 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Central Phoenix /East Valley Light Rail Transit System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Phoenix Regional Public Transportation Authority (RPTA), in cooperation with the cities of Phoenix, Tempe, and Mesa intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on the proposed Central Phoenix/East Valley light rail transit project in Maricopa County, Arizona. The EIS will evaluate the following alternatives: a no-build alternative and light rail transit alignment options (including station locations, support facilities, and a supporting bus system) plus any additional alternatives that emerge from the scoping process. Scoping will be accomplished through correspondence and discussions with interested persons, organizations, and Federal, State and local agencies, and through public meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the RPTA, 302 N. First Avenue, Suite 600, Phoenix, AZ 85003 by April 2, 1999.

Scoping Meetings: RPTA and the cities of Phoenix, Tempe, and Mesa will conduct public scoping meetings on the following dates and locations:

- Tuesday, March 16, 1999, 5:00 pm—7:00 pm—Program Room, Tempe Public Library, 3500 S. Rural Road, Tempe, Arizona
- Wednesday, March 17, 1999, 5:00 pm—7:00 pm—Music Room (4th Floor), Central Phoenix/Main Library (Burton Barr Public Library), 1221 N. Central Avenue, Phoenix, Arizona.
- Thursday, March 18, 1999, 5:00 pm—7:00 pm, Saguaro Room, (2nd Floor), Mesa Public Library, 64 East 1st Avenue, Mesa, Arizona and
- Friday, March 19, 1999, 10:30 am—1:00 pm, Phoenix City Hall Assembly Room, A&B, 200 W. Washington Street, Phoenix, Arizona.

ADDRESSES: Written comments on the project scope should be sent to Mr. Wulf Grote PE, Project Director, RPTA, 302 N. First Avenue, Suite 600, Phoenix, AZ 85003. Scoping meetings will be at the locations stated above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Hom, Director, Office of Planning and Program Development Federal Transit Administration, Region IX, (415) 744–3133.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and the RPTA, in cooperation with the cities of Phoenix, Tempe and Mesa invite written comments until April 2, 1999.

During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging which achieve similar objectives. Comments should focus on the issues and alternatives for analysis, and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the comment period for the Draft EIS. If you wish to be placed on the mailing list to receive further information as the project continues, contact Mr. Wulf Grote at the RPTA; (see ADDRESSES above). A scoping package describing the light rail alignment alternative in greater detail is also available by mail from Mr. Wulf Grote at (602) 262–7242.

II. Description of Study Area and Project Need

The proposed project for environmental review consists of approximately a 25-mile total light rail transit system. An initial operating segment consisting of approximately 13 miles, in the core of the corridor, has been identified as the focus of the preliminary engineering effort. The total corridor links Phoenix, Tempe, and Mesa from Mesa Drive in downtown Mesa, through Tempe, west to downtown Phoenix and north along the Central Avenue Corridor to the vicinity of 19th Avenue and Bethany Home.

For the 25-mile segment, two terminal locations in Phoenix will be evaluated during the NEPA process. One terminal location is in the vicinity of Central Avenue and Camelback Road. The other is located in the vicinity of 19th Avenue and Bethany Home Road, integrated with the Chris-Town Mall. For the initial operating segment, the exact length of the LRT segment, station locations, and supporting facilities would also be determined during the NEPA process.

The new light rail transit alignment will be located either within existing arterial streets or in the parallel Union Pacific Railroad (UPRR) corridor or a combination of the alignment locations. The light rail transit alignment provides the opportunity to connect several regionally significant activity centers, entertainment venues, and special event locations. In addition, the light rail project is being coordinated with the City of Phoenix, Aviation Department and is included as an integral mobility component of the Sky Harbor International Airport master plan update. The light rail corridor also parallels Interstate 10, Interstate 17, and US 60 (Superstition Freeway) generally considered to be the spine of Maricopa County's freeway transportation system, carrying the greatest number of people and vehicles of any corridor in the region and serving many of the region's primary activity centers. Congestion and delays along these freeways and along the parallel arterial streets are now considered to be the major transportation problem facing this rapidly growing region. With the prospect of continued and accelerated growth in population and tourism in Maricopa County, travel conditions will continue to deteriorate at an increasing rate. Between 1990 and 1995, Maricopa County grew by more than 15 percent to a current population of 2.7 million. By 2020, it is estimated that the population of Maricopa County will exceed 4 million. The County's growth rate was the third fastest among the nation's top fifty counties from 1980 through 1994.

In response to this need, the RPTA in cooperation with the cities of Phoenix, Tempe, and Mesa have completed a

Major Investment Study (MIS) for the Central Phoenix/East Valley corridor. The MIS study resulted in a recommended design concept and scope consisting of a light rail transit alternative operating in one of several alignment options and a supporting bus system to provide the required mobility in the Central Phoenix/East Valley corridor and the region. Copies of the MIS are available from Mr. Wulf Grote at the RPTA (see Addresses above).

III. Alternatives

The alternatives proposed for evaluation include: (1) No-action, which involves no change to transportation services or facilities in the corridor beyond already committed projects, (2) a new light rail transit alignment located either within the UPRR right-of-way or selected surface streets or a combination of the UPRR corridor and surface streets.

IV. Probable Effects

FTA and the RPTA in cooperation with the cities of Phoenix, Tempe, and Mesa will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: neighborhood protection, traffic diversion, business access, aesthetics, bicycle facilities, contamination, alternative modes of transportation, stormwater management, and archaeological and cultural resources. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, air quality, groundwater and potentially contaminated sites will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate any significant adverse impacts will be developed.

V. FTA Procedures

The EIS for the Central Phoenix/East Valley project will be prepared simultaneously with preliminary engineering for the approximately 13-mile initial operating segment in the core of the corridor. The EIS/preliminary engineering process will assess the social, economic, and environmental impacts of the proposed alternatives while refining their design to minimize and mitigate any adverse impacts. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS and comments received, the RPTA and the cities of Phoenix, Tempe, and Mesa will select a preferred alternative to be further detailed in the Final EIS.

Issued on: February 24, 1999.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 99–5000 Filed 2–26–99; 8:45 am]

BILLING CODE 4910–57–U

federal register

Monday
March 1, 1999

Part II

Environmental Protection Agency

40 CFR Chapter I

Approach to Reinventing Regulations of Storing Mixed Low-Level Radioactive Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[F–99–MLLP–FFFFF; FRL–6305–1]

RIN 2050–AE45

Approach to Reinventing Regulations on Storing Mixed Low-Level Radioactive Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: This ANPR describes several options EPA is considering to make our regulations more flexible for generators of mixed low-level radioactive waste (MLLW) who are storing wastes that we and the Nuclear Regulatory Commission (NRC or Commission) oversee. In this ANPR, we are requesting: comments on options for storing mixed waste; other suggestions on providing regulatory flexibility to manage mixed waste; and from generators of MLLW, information about generating such wastes and your operating procedures and costs for storing, treating, and disposing of these wastes.

DATES: To make sure we consider your comments they must be received by April 15, 1999.

ADDRESSES: You can send an original and two copies of your comments referencing Docket Number F–99–MLLP–FFFFF to (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. To reduce paper, we are asking you to send one paper copy, and an electronic copy by diskette or Internet email. In this case, send your comments to the RCRA Information Center on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format we can convert to ASCII (TEXT). Please include on the disk label the name, version, and edition of your word processing software as well as your name. Protect your diskette by putting it in a protective mailing envelope. To send a copy by Internet email, address it to: *rcra-docket@epamail.epa.gov.* Make sure this copy is in ASCII format that doesn't use special characters on encryption. Cite the docket number F–99–MLLP–FFFFF in your electronic file.

The RCRA Information Center is at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia. You may look at and copy supporting information for RCRA rules from 9 AM to 4 PM Monday through Friday, except for Federal holidays. But you must make an appointment to review docket materials by calling (703) 603–9230. You may copy up to 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For more information on specific aspects of this ANPR, telephone Nancy Hunt at (703) 308–8762, or Chris Rhyne at (703) 308–8658, or write them at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The index and electronically obtainable supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/radio.
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epasower

The official record for the action will be kept in the paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be placed in the official record, EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Outline

I. Why Are We Publishing Today's ANPR?
II. What Approaches Can Simplify Dual Regulation?
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1. Military Munitions Rule Precedent for Conditional Exemptions
2. Court of Appeals Decision
3. Rationale for Conditional Exemption
4. Key Factors in Decision
5. Possible Conditions
6. What Facilities Might Be Eligible?
7. Would DOE Mixed Waste Be Eligible for a Conditional Exemption?
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VII. Regulatory Assessment Requirements
A. Executive Order (E.O.) 12866
B. Executive Order (E.O.) 12875: Enhancing the Intergovernmental Partnership
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E. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996
F. Unfunded Mandates Reform Act
G. National Technology Transfer and Advancement Act of 1995
H. Paperwork Reduction Act
I. Executive Order (E.O.) 12898: Environmental Justice.

I. Why Are We Publishing Today's ANPR?

Today's ANPR introduces strategies we're considering to make regulations more flexible for commercial generators of Mixed Low-Level Radioactive Waste (MLLW), for storage and treatment of mixed waste. We are doing this in response to EPA's long-held view that the joint regulation of mixed waste under the Resource Conservation and Recovery Act and the Atomic Energy Act creates compliance difficulties and may be, at times, redundant. We are also responding to the regulated community's concerns regarding the inefficiencies of dual regulation of mixed waste, the perceived mismatch of

the two regulatory systems, and concern for radiation exposure of workers. This ANPR focuses on facilities regulated by the NRC or NRC Agreement States, and on strategies for reducing or eliminating the burden of dual regulation. These facilities include nuclear power plants, fuel cycle facilities, pharmaceutical companies, medical/research laboratories, universities and academic institutions, and others.

Our ANPR requests comments on ways for EPA to address the issue of dual regulation of mixed waste storage and treatment. We're also asking generators of MLLW to tell us the volumes and nature (waste codes, radionuclides present, and curie level) of mixed wastes you generate and your legacy [1] wastes in storage.

II. What Approaches Can Simplify Dual Regulation?

A. Conditional Exemption for Storage

EPA is exploring options for providing regulatory flexibility in mixed waste management to the regulated community that generates, stores, and conducts on-site treatment of mixed low-level radioactive waste (MLLW) which is subject to NRC *and* EPA oversight. We are exploring an option modeled on the conditional exemption developed for non-chemical waste military munitions in the Military Munitions Rule (40 CFR part 266). (As discussed later in this ANPR, EPA is also developing approaches to address the disposal of mixed waste, but we are not soliciting comments on this issue in today's ANPR.)

1. Military Munitions Rule Precedent for Conditional Exemptions

The Military Munitions Rule identifies when conventional and chemical military munitions become a hazardous waste subject to RCRA Subtitle C. In the case of the Military Munitions Rule, EPA developed a conditional exemption approach for providing regulatory flexibility to the military for storing and transporting non-chemical waste munitions. Under the conditional exemption, non-chemical waste military munitions that meet the definition of ''hazardous waste'' are not regulated under RCRA Subtitle C as a hazardous waste so long as the facilities storing or transporting these munitions meet all of the conditions for storing and transporting non-chemical waste munitions listed in the rule. (For a complete discussion of the Military Munitions Rule, see 62 FR 6621; February 12, 1997.)

2. Court of Appeals Decision

The Court of Appeals upheld all aspects of the rule in *Military Toxics Project* v. *EPA*, 146 F. 3rd 948 (D.C. Cir. 1998). The court agreed that ''where a waste might pose a hazard only under limited management scenarios, and other regulatory programs already address such scenarios, EPA is not required to classify a waste as hazardous waste subject to regulation under Subtitle C.'' Id. at 958. The court agreed that ''Congress has not spoken directly to the issue of conditional exemption,'' and upheld as reasonable EPA's interpretation that Section 3001(a), which requires the Administrator to promulgate criteria for identifying and listing wastes that should be subject to Subtitle C requirements, allows the use of conditional exemptions. Id.

3. Rationale for Conditional Exemption

In the munitions rule, EPA conditionally exempted munitions stored on site and transported off site to DOD or commercial facilities. However, off-site storage and treatment remained subject to RCRA. A comparable approach for commercial MLLW would be for EPA to provide a conditional exemption for commercial generators of MLLW who store mixed waste on site. EPA would base the approach on the NRC or the NRC Agreement State licensing process and regulatory requirements, and their adequacy in addressing risks from RCRA hazardous constituents. By a conditional exemption, EPA could eliminate redundant or dual requirements where: wastes are managed safely and mismanagement is unlikely; appropriate safeguards, recordkeeping, and monitoring are in place; and penalties or other consequences may be imposed if the governing regulatory framework is not followed.

4. Key Factors in Decision

In studying a conditional exemption from RCRA regulation for commercial storage of MLLW, EPA will be evaluating certain key factors. First, EPA will evaluate whether NRC regulation of stored commercial low-level waste (LLW) adequately protects against possible risks from RCRA hazardous constituents in mixed waste. Although NRC regulation and oversight is designed primarily for radiation risks, NRC, the regulated industry, and others have argued that these standards largely duplicate RCRA requirements and thus will protect against chemical risks. In this rulemaking, EPA will review the licensing requirements and NRC standards for the management of LLW as compared to RCRA standards. EPA will also complete a study comparing NRC and EPA mixed waste storage requirements. This study will independently review the conclusions reached in studies by USWAG, the Electric Power Research Institute, and the Nuclear Management and Resources Council, Inc. (who represent members of the power generation industry) regarding applicable NRC standards. These parties concluded that the technical design and operating standards of the NRC meet or exceed RCRA standards in virtually all respects, though there were differences in certain procedural requirements.

Second, as described below, EPA is reviewing documentation of incidents involving the management and on-site treatment of radioactive wastes at nuclear power facilities. The preliminary information suggests that these facilities generally have an excellent low-level waste management safety record. Thus, regulating mixed wastes stored at these facilities under RCRA Subtitle C may not provide additional protection to human health and the environment.

If these key factors demonstrate that the NRC regulatory and licensing program will adequately control risks from hazardous constituents as well as radioactive material, we might rely on the safeguards of the NRC regulatory framework during MLLW storage via a conditional exemption. We are interested in your suggestions for other key factors needed to evaluate a conditional exemption.

EPA Study of NRC Nuclear Power Licenses

EPA is studying the regulatory and licensing framework under which low-level waste (LLW), and therefore MLLW, is stored by waste generators. EPA is also looking into provisions in low-level waste generator licenses, in particular nuclear power plan licenses, concerning the on-site treatment of LLW prior to shipment off-site for disposal to assess whether these requirements are protective of human health and the environment. Though NRC requirements concerning the generation, storage, and treatment of LLW are more performance based (for example, no releases/leaks), rather than prescriptive as in RCRA (where types of drums and waste management are specified to prevent leaks), the protection from exposure to radioactive waste may serve as well to protect human health and the environment from exposure to hazardous wastes during storage. EPA

[1] Legacy MLLW is stored waste for which no treatment technology or disposal capacity is available.

will also be reviewing the licensing system of NRC and Agreement States for other generators of mixed waste (e.g., hospitals, pharmaceutical companies, and research laboratories).

EPA Compliance Review

EPA is reviewing compliance records related to NRC radiation controls for nuclear power plants and other licensees, to determine if there are releases or mismanagement of LLW. If this review finds that these facilities are managing LLW safely (that is avoiding releases by complying with regulatory, licensing provisions and tie-down conditions [2]) such findings may support the protective nature of NRC's regulatory and licensing framework concerning the generation, storage, and treatment of LLW. This review will be available in the RCRA docket with the **Federal Register** publication of the proposed rulemaking planned for October 1999.

For further information on applicable NRC regulations refer to 10 CFR part 20 Subpart I. Information regarding NRC's regulations, or guidance documents may be obtained by either contacting the NRC Public Document Room, at 2120 L Street, NW, Lower Level, Washington, DC 20037 (202–634–3273 or 800–397–4209, Monday through Friday, 8:30 am to 4:15 pm) or by visiting NRC's Internet web page at *http://www.nrc.gov*.

5. Possible Conditions

EPA would base any conditional exemption for commercial MLLW on a finding that mismanagement of the hazardous constituents in the waste would be improbable, given compliance with NRC standards. In connection with this finding, EPA might impose specific conditions under RCRA authority to insure protectiveness and enforceability of the exemption. This was the approach EPA took in the military munitions rule. Examples of possible conditions include:

(1) The facility generating MLLW has a valid NRC or NRC Agreement State license.

(2) The waste is stored in a tank, container, or containment building.

(3) The facility stores its MLLW on-site in accordance with the NRC license requirements.

(4) The facility is subject to periodic NRC or NRC Agreement State inspections.

(5) Chemically incompatible wastes are not stored near each other.

(6) The facility notifies EPA of any storage unit for which it claims a conditional exemption (discussed later in this ANPR).

(7) The owner/operator reports any violation of the conditions for the exemption (discussed later in this ANPR).

If a facility met these conditions under a conditional exemption approach, the wastes it generated would be exempt from RCRA hazardous waste requirements, such as RCRA permitting and technical storage standards. However, if the facility (or waste it generated) fell out of compliance with one of the exemption conditions, its waste would be regulated as hazardous. (This approach is discussed more fully later in the ANPR.)

The basic conditions for an exemption would presumably apply to all options for regulatory flexibility covered in this ANPR. In other words, the basic conditions would apply to the conditional exemption for stored mixed waste described in section II.A., the approach for decay-in-storage contained in section II.B., and on-site treatment during storage discussed in section II.C. EPA seeks comments on these or other possible conditions. Commenters are encouraged to address the appropriateness of these conditions, and other conditions that might be appropriate. Commenters should also provide their views on whether conditions are needed at this level of specificity, given adequate NRC controls.

6. What Facilities Might Be Eligible?

EPA's focus in preparing this ANPR has been on commercial MLLW generated by the nuclear power industry, based upon the April 1997 consent decree (described under section VI.A.). EPA, however, encourages comment on whether a conditional exemption or similar approach should apply to all generators of mixed waste or be limited to specific industries, such as nuclear power plants. EPA recognizes that NRC exerts greater direct regulatory control over nuclear power plants than other sources. For example, NRC has a Radiation Safety Officer and on-site Resident Inspector at each operating nuclear power plant. However, it may be appropriate for a conditional exemption to include all mixed low-level waste generators because similar safeguards may be imposed by their NRC or NRC Agreement State licenses. In addition, the decay-in-storage option responds to specific problems encountered by facilities that use short-lived radionuclides and store this waste on-site. (See II.B. below.)

EPA seeks comment on whether a conditional exemption or other relief should apply to commercial mixed wastes stored at facilities that provide storage services to mixed waste generators with whom they contract and by whom they are paid. Also, should an exemption apply to mixed waste generated at RCRA mixed waste treatment facilities due to maintenance operations or residues from treatment?

In summary, we encourage comment on whether a conditional exemption or similar approach should apply to: (1) the nuclear power industry storing waste on site, (2) other MLLW generators such as hospitals, laboratories, or pharmaceutical companies, (3) off-site facilities storing commercial mixed waste, and (4) mixed wastes generated during treatment or maintenance activities at RCRA TSDFs permitted to treat or dispose of mixed waste. Later in this ANPR, EPA solicits comments on extending RCRA relief to treatment of mixed waste.

7. Would DOE Mixed Waste Be Eligible for a Conditional Exemption?

Today's ANPR addresses only commercial mixed waste regulated by NRC or NRC Agreement states. It does not cover DOE-managed mixed wastes. EPA has limited the ANPR in this way because it responds to a 1997 Consent Decree (discussed later), in which EPA promised to consider relief for facilities managing commercial low-level mixed wastes. DOE wastes lie outside the scope of this decree.

B. Conditional Exemption for Decay-in-Storage

The previous section of this ANPR discussed the possibility of a RCRA conditional exemption for mixed wastes stored at generator sites under NRC controls, including medical, research and other facilities. Another approach for these facilities might be based on NRC's decay-in-storage requirements.

NRC generally allows research, medical and other facilities to store low-level wastes containing radionuclides with half-lives of less than 65 days until 10 half-lives have elapsed and the radiation emitted from the unshielded surface of the waste (as measured with an appropriate survey instrument) is indistinguishable from background levels. This process is known as decay-in-storage. Once the specified decay has occurred, the waste may then be disposed of as non-radioactive waste after ensuring that all radioactive material labels are rendered unrecognizable (see 10 CFR 35.92). Radioactive waste may also be decayed

[2] Tie-down conditions include guidance documents and policies concerning storage and treatment of LLW which become part of the license by reference.

in storage under certain circumstances in accordance with 10 CFR 20.2001.

Reduced Worker Exposure to Radiation

Decay-in-storage for LLW has a limited storage time frame based on the radionuclides (and half-lives) specified in the facility's NRC license. A RCRA exemption for mixed wastes undergoing decay-in-storage would address a major concern of mixed waste generators regarding overlapping RCRA and AEA requirements for radionuclides of relatively short duration. Such management of LLW reduces or eliminate worker exposures to radionuclides in keeping with NRC's ALARA (as low as reasonably achievable) goal for worker radiation exposures. EPA, at the request of several universities and medical facilities, is looking into decay-in-storage as a way of reducing risk and regulatory inefficiency in the management of MLLW.

Matching License Requirements for Storing Waste with Short Half-Lives

Under current RCRA requirements, persons generating hazardous waste must obtain a RCRA permit if they store wastes on site for more than 90 days. The flexibility EPA is considering may include RCRA requirements governing time in storage and the necessity of having a RCRA storage permit for certain generators. The generators include universities, hospitals, laboratories, and research operations who use short-lived radionuclides and generate MLLW that is subject to NRC and EPA oversight. We may allow these generators to store MLLW on-site in accordance with their NRC licenses, and without a RCRA storage permit, for the purpose of decay-in-storage where this practice is approved for LLW under the facility's NRC or Agreement State license. Such flexibility would allow storage of relative short-lived radionuclides during a decay period currently allowable under NRC regulations (see 10 CFR 35.92 and 10 CFR 20.2001) without a RCRA storage permit.

How Long Might an Exemption Be Valid During Stored Decay?

EPA might allow an exemption for decay-in-storage to be valid as long as the mixed waste: (1) remains on-site and (2) is subject to NRC regulation. EPA notes that, under a decay-in-storage conditional exemption, a MLLW is no longer subject to NRC licensing requirements when the radioactive portion of the waste has decayed to the level described in the NRC or NRC Agreement State license. At that point the waste no longer needs to be managed as a radioactive waste under the provisions of the license, and would be subject to the applicable provisions of Subtitle C of RCRA. Once the waste is subject only to the RCRA regulations (because the decayed waste still exhibits a RCRA hazardous waste characteristic, or is a listed hazardous waste), then shipment off-site for treatment, if needed, and disposal at a Subtitle C facility would be required. Under this exemption, RCRA time lines and other requirements (found at 40 CFR part 262) would begin when decay requirements in the NRC or Agreement State license are met. We seek general comment on this idea and on how to assure that waste is treated and/or disposed within the time frames required by RCRA following decay.

C. Can I Treat Waste During Storage?

EPA also is considering exempting the on-site treatment of MLLW from Subtitle C regulation under the conditions listed above. An additional condition might be that the waste is treated on-site and is physically/chemically treated in a tank, container, or containment building in accordance with the generator's NRC license requirements. The logic behind this approach would be, in part, that EPA's regulations governing storage and treatment in tanks, containers, and containment buildings are generally the same. Thus, if NRC controls were sufficient for storage, it's likely they would also be sufficient for treatment. On the other hand, more specific control might be appropriate for some forms of treatment, such as thermal treatment, because of concerns for air emissions and the specificity of RCRA requirements in this area.

We request comment on treatment of mixed waste under a conditional exemption, and while the mixed waste is subject to the specific NRC licensing requirements for the management of LLW. EPA requests comment on the degree to which NRC regulation of the treatment of LLW will protect against risks from hazardous waste treatment, and the added necessity of RCRA Subtitle C regulation for treatment of MLLW.

III. Implementation

A. Enforcement and Notification

The NRC has in place a ''General Statement of Policy and Procedure for NRC Enforcement Actions'' (NUREG–1600) which states the Commission's policy regarding enforcement. This policy provides significant consequences for violating NRC or license requirements and takes into consideration the specific circumstances of a particular case. If a nuclear power plant is found to have violated the NRC license, or tie-down conditions of the license, the license (and responsible person) may be subject to substantial civil and criminal penalties. Based on these provisions, licensed facilities have incentives to manage stored waste safely.

If we adopt a conditional exemption approach for mixed waste as we did in the Munitions Rule, we might adopt a similar enforcement approach. In this case, we would consider non-compliant facilities to be subject to RCRA Subtitle C from the time of non-compliance. Utilities or other mixed waste generators that claimed the conditional exemption, but failed to store and/or treat the MLLW in compliance with the provisions of the exemption, would no longer be exempt from the applicable provisions of RCRA. The facility could then be subject to enforcement action (or citizen suit) for violations of RCRA storage or treatment requirements. Alternatively, EPA might consider a less detailed approach, which didn't tie the conditional exemption to compliance with NRC standards. Instead, the exemption might be restricted to commercial MLLW regulated by NRC or Agreement States, and managed under basic conditions (e.g., managed in tanks or containers). In this case, releases or storage in non-tanks or containers would be enforceable under RCRA, but EPA would rely on NRC and the Agreement State for direct enforcement of the licenses. This approach would significantly simplify implementation, but would provide less direct EPA enforcement. EPA might choose an approach along these lines if it is convinced that NRC oversight of the low-level radioactive waste is sufficient to ensure against mismanagement of hazardous constituents in mixed wastes, without independent EPA oversight.

We are seeking comment on both of these approaches as well as alternative implementation and enforcement approaches.

Reporting Requirement

To determine if a unit used to store MLLW is in compliance with the terms of the exemption, we are considering including a reporting requirement as a condition of the exemption. If we were to adopt an approach comparable to that in the Military Munitions Rule, we might require the owner or operator to provide oral notice to EPA within 24 hours of the time when he or she becomes aware of a failure to meet a condition of the NRC license as it relates

to the on-site storage and/or treatment of MLLW that may endanger human health or the environment with respect to the hazardous components of the waste. The owner/operator would provide a written notice of any failure to meet a condition for the exemption within 5 days of such failure. The owner/operator would be required to provide a written report to NRC, with a copy to EPA, pursuant to the reporting requirements outlined in 10 CFR part 20 Subpart M. As in the munitions rule, we could allow the owner or operator to request in writing that EPA reestablish the conditional exemption once the facility's waste management practices return to compliance with all conditions of the exemption. Under the munitions rule, reinstatement is automatic if EPA does not respond negatively. EPA requests comment on this approach, including whether reinstatement should be automatic.

If EPA takes a broad approach to a conditional exemption, as described in II–A, reporting requirements as well as notification requirements discussed below might be simplified.

Notification of Conditional Exemption for a Unit

Finally, to enable us to know which wastes and which storage units are subject to oversight under a conditional exemption, we are considering requiring the owner or operator to notify us within the first 90 days when a storage and/or treatment unit is used to store or treat MLLW and a conditional exemption is claimed for that unit. (See list of conditions under II.A.5.) This notification is similar to the provisions of the munitions rule (see 40 CFR 266.205).

B. Future Amendments to NRC Regulations

NRC has extensive experience regulating radiation safety hazards, which directly affect not only the public but also workers stationed at every nuclear power facility. EPA is working closely with NRC in developing the approaches discussed in today's ANPR. EPA recognizes that NRC license requirements or regulations may change over time. EPA will continue to coordinate with NRC to implement these approaches, and NRC can notify EPA as changes to the storage and treatment requirements are considered, so that the EPA can make any modifications to the conditional exemption necessary to ensure the continued protection of human health and the environment. We are interested in your views on what impacts future amendments to NRC regulations may have on any conditional exemption EPA may propose.

C. Request for Public Comment

We are requesting public comments regarding the suitability of the above approaches for providing regulatory flexibility under RCRA to the nuclear power industry and other facilities which generate, store, and/or treat MLLW on site in accordance with their NRC licenses. We are also seeking comment regarding the ramifications of the options on (1) the protection of human health and the environment and (2) the degree to which the options are useful to the regulated community. EPA also requests comment on alternative ideas regarding managing mixed waste under RCRA.

IV. Information Needs

In preparation for conducting the technical analyses and associated regulatory analyses (such as the required analyses of economic costs and benefits and of impacts on small businesses and government entities) for the upcoming mixed waste management rule, we are requesting data from NRC Agreement States and licensed commercial mixed waste generators other than nuclear power plants. We are interested in obtaining data on mixed waste generation and management practices for the following:

- Industrial—manufacturing facilities (both small quantity and large quantity generators);
- Industrial—research and development facilities;
- Industrial sealed source users;
- Other industrial facilities;
- Academic institutions (both large and small quantity generators);
- Medical facilities (colleges and hospitals);
- Medical research facilities;
- Federal research and development facilities (other than DOE, which has been providing data as a part of the rulemaking effort); and
- Other non-defense, non-nuclear power plant facilities.

We are requesting data from facilities other than nuclear power plants, in order to address gaps in the available data. However, EPA also encourages nuclear power plants to provide data and comments that will inform the regulatory process.

We have been reviewing information on the generation and management of MLLW in the commercial sector under current regulations using two primary sources of data on commercial generation and management practices. The first is a database developed by the Edison Electric Institute from a survey of nuclear power plants in 1997. The second is a database developed for the *National Profile on Commercially Generated Low-Level Radioactive Mixed Waste (NUREG/CR 5938)*, a survey of commercial generators jointly sponsored by NRC and EPA that was published in December 1992. Both of these data sources contain valuable information concerning the generation and management of MLLW. They are available in the docket.

To supplement currently available data, we are requesting generators of mixed waste to provide the following types of information:

- *MLLW Generation and Management:* The Agency requests information for individual waste types or categories of waste on current MLLW generation rates and storage, treatment, and disposal practices that can be used to update the data from the 1992 National Profile. Data on types of mixed waste generated, RCRA codes, hazardous constituents and concentrations, storage and treatment techniques, and disposal practices associated with individual waste streams or waste categories would be particularly useful, as would data on waste volumes at the point of generation and after treatment.
- *MLLW Cost Data:* The agency requests information on the costs associated with the management of MLLW, including storage costs; costs of sampling and analysis for compliance with RCRA requirements, including the universal treatment standards (UTS); pre-treatment and treatment costs (by method); packaging and transport costs; disposal costs; and reporting and recordkeeping costs. Because under an RCRA exemption, generators could manage MLLW in the same manner as LLW, the Agency seeks data on LLW management costs as well.
- *Impacts of Exemption:* The Agency requests comments and/or data on the potential effects of RCRA exemptions for MLLW (e.g., impacts on future waste management capacity, waste management practices, and waste minimization) that are important to parties potentially affected by the mixed waste rule.

We request that you indicate the units of reference for all data (including time). We would appreciate the reporting of liquid volume in gallons; the mass of solids in kilograms; the radioactivity of individual radioisotopes in millicuries; the concentration of RCRA hazardous constituents in milligrams/kilogram (for solids) and milligrams/liter (for liquids); and the concentration of radionuclides in picocuries/gram (for solids) and picocuries/liter (for liquids).

Lastly, we request information on the effect of a conditional exemption for commercial MLLW generators who qualify as ''small entities'' (i.e., businesses, governments, or organizations) for purposes of the Regulatory Flexibility and Small Business Regulatory Enforcement Fairness Acts. The Small Business Administration's definition of small business, which varies by Standard Industrial Classification code, can be found at 13 CFR 121.201 or on the Internet (*http://www.sbaonline.sba.gov/gopher/Financial-Assistance/Size-Standards*). A small government is defined as a government of a city, county, town, school district, or special district with a population of less than 50,000. A small organization is defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Generators of MLLW are encouraged to comment on potential impacts specific to small entities that may result from increased RCRA flexibility for MLLW management.

V. Facts and Historical Background

A. What Is Mixed Waste?

Mixed waste is radioactive hazardous waste. In 1976, the Resource Conservation and Recovery Act (RCRA) authorized EPA to regulate hazardous waste from ''cradle to grave.'' This includes the minimization, generation, transportation, treatment, storage, and disposal of hazardous waste. The definition of solid waste in the RCRA legislation specifically excludes source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended. In the 1984 Hazardous Solid Waste Amendments to RCRA (HSWA), Congress established land disposal restrictions (LDR) for hazardous waste and directed EPA to establish treatment standards for hazardous waste. Hazardous waste was prohibited from land disposal unless treated to EPA established standards. In 1986, EPA published a notice clarifying RCRA jurisdiction for mixed waste and indicated that States must include mixed waste in RCRA base authorization (51 FR 24504; July 3, 1986). EPA also published a notice (53 FR 37045; September 23, 1988) clarifying that existing facilities that treat, store or dispose of mixed waste had to obtain interim status pursuant to Subtitle C of RCRA and that generators of mixed waste were to notify EPA. Congress provided further clarification of mixed waste in the Federal Facilities Compliance Act.[3] Information on mixed waste can be found at the website address: http://www.epa.gov/radiation/mixed-waste.

Mixed waste is regulated under multiple authorities: by RCRA, as implemented by EPA or authorized states for the hazardous waste components; and by the Atomic Energy Act of 1954, as amended (AEA), for radiological components as implemented by either the Department of Energy[4] (for radioactive waste generated by DOE), or the Nuclear Regulatory Commission (NRC) or its Agreement States (for all other mixed waste).

Commercial mixed waste generators, particularly nuclear power plants, have raised the concern that AEA and RCRA requirements for mixed waste overlap, and compliance with both is overly burdensome. The nuclear power industry has provided information which supports their view that radioactive waste disposal facilities designed and licensed according to the AEA offer human health and environmental protection similar to that required by RCRA.

B. Where Is Mixed Waste Generated?

Mixed low-level radioactive waste (MLLW) is generated in all 50 states and the District of Columbia at nuclear power plants, fuel cycle facilities, pharmaceutical companies, medical and research laboratories, universities and academic institutions, and other facilities. Wastes that are both radioactive and hazardous are generated as a result of a number of processes such as medical diagnostic testing and research, pharmaceutical and biotechnology development, and generation of nuclear power. The *National Profile* indicated approximately 3,950 m^3 of MLLW was generated in the U.S. in 1990. Of this amount, approximately 2,840 m^3 (nearly 72%) was liquid scintillation counting fluid. Organic solvents, chlorofluorocarbons, waste oil, and aqueous corrosives, made up 17%, toxic metals made up 3%, and ''other'' waste made up 8%.

The Edison Electric Institute, based on a 1997 survey of nuclear power plants, reports that the volume of MLLW currently being generated by the nuclear utility industry has been substantially reduced from 1990 levels due to waste minimization practices being followed by the generators. Legacy MLLW has also been reduced due to limited treatment technology development. Based on the *Mixed Waste Treatment Study* prepared for the Electric Power Research Institute (December 1995), EPA understands that for nuclear utilities there are still a few mixed wastes for which treatment technologies or disposal facilities may not be commercially available. Wastes, such as freon still bottoms, lead paint chips and sludge, are being indefinitely stored due to the lack of treatment and disposal facilities. A limited number of EPA site visits to hospitals and universities in 1998 found a small number of mixed wastes that could not be treated with technologies that are commercially available at this time. In addition, industry groups such as the American Chemical Society, and the International Isotope Society, have discussed with EPA representatives on several occasions their continued difficulty finding suitable treatment and/or disposal for some of the mixed wastes they generate despite considerable efforts to minimize waste generation in general and mixed waste generation in particular. They also cite very high costs for the treatment and disposal which is available. (See also the discussion of our policy of lowered enforcement priority for mixed waste later in this ANPR.)

C. Applicability of NRC Regulations

NRC's mission, under the Atomic Energy Act of 1954, as amended (AEA), is to regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, to promote the common defense and security, and to protect the environment. The NRC's scope of responsibility includes regulation of commercial nuclear power plants; research, test, and training reactors; fuel cycle facilities; medical, academic, and industrial uses of nuclear materials; and the transport (along with the Department of Transportation), storage, and disposal of nuclear materials and wastes. NRC is authorized by the AEA to issue licenses to commercial users of source, special nuclear and byproduct radioactive

[3] The Federal Facilities Compliance Act (FFCA) of 1992, defined mixed waste as a waste that contains both hazardous waste subject to the requirements of the RCRA and source, special nuclear, or byproduct material subject to the requirements of the Atomic Energy Act of 1954, as amended. In addition, the FFCA required that for each facility at which DOE generates or stores mixed waste DOE was to develop a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes. Such plan had to be submitted to and approved by the State or EPA regulator, and incorporated into an order issued by the regulator requiring compliance with the approved plan.

[4] The Department of Energy (DOE) referred to in this ANPR includes DOE facilities and facilities operated by the Naval Nuclear Propulsion Program (NNPP), which is a joint program of DOE and the Department of the Navy.

materials and to regulate federal facilities other than DOE and Naval Nuclear Propulsion Program facilities.

Thirty states have signed agreements with NRC enabling the various Agreement States to regulate source, byproduct, and small quantities of special nuclear material within their boundaries. Facilities located in agreement States are subject to regulatory requirements for radioactive material that are authorized by state law. This applies to all source, special nuclear, and byproduct material except that from utilization facilities and fuel cycle facilities, which are subject to NRC's requirements, and DOE facilities, which are subject to DOE Orders. While Agreement States are required to adopt programs that are adequate to protect public health and safety and compatible with the NRC program, Agreement States may also adopt some requirements that are more stringent than the comparable Federal NRC requirements. NRC conducts periodic reviews of Agreement State programs to assure that those programs remain adequate to protect public health and safety and compatible with NRC's program. NRC retains authority over production and utilization facilities and other activities in Agreement States specified by section 274(c) of the AEA.

A large portion of the radioactive mixed waste generated by medical and biomedical research institutions contains radionuclides with relatively short half-lives. These short-lived radionuclides are especially prevalent in the combustible dry wastes, and aqueous wastes generated by medical and academic institutions. Currently NRC generally allows medical facilities to store for decay. For example, generators may store waste containing radionuclides with half-lives of less than 65 days until the radiation emitted from the unshielded surface of the waste, as measured with an appropriate survey instrument, meets the decay levels described in their NRC license (typically 10 half-lives of decay and radioactivity levels indistinguishable from background levels). The waste may then be disposed as a non-radioactive waste after ensuring that all radioactive material labels are rendered unrecognizable (10 CFR 35.92). Radioactive waste may also be stored for decay under certain other circumstances in accordance with 10 CFR 20.2001. Such management can reduce worker exposure and potential risks to the public during transportation of the waste.

Generators of mixed waste are subject to both RCRA and AEA requirements. Generators of mixed waste must obtain a license from NRC or an NRC Agreement State for possession and use of radioactive materials, and may need a RCRA permit depending on the time waste is stored and the volume of waste generated. Some of the mixed waste generated by private entities and government-for example, wastes with radionuclide concentrations exceeding the acceptance criteria of commercial sector treatment and disposal facilities-is (and has been) stored on-site indefinitely.

D. EPA Receipt of Rulemaking Petition

Because there is limited treatment technology and disposal capacity for some mixed waste, NRC licensees who generate mixed waste may be forced to store some of their mixed waste on site. On-site storage of mixed waste can subject the NRC licensees to RCRA permit requirements for storage facilities. In response to this, the Utility Solid Waste Activities Group (USWAG), a national organization of power companies, petitioned the U.S. EPA on January 13, 1992. USWAG requested that EPA ''(1) amend 40 CFR 261.5 to establish a separate mixed waste small quality generator exemption for Nuclear Regulatory Commission ('NRC') licensees, and to make such rule immediately effective as an interim final rule, and (2) amend 40 CFR 262.34 to allow NRC licensees to accumulate such waste on-site in qualified tanks or containers until such time as adequate, fully licensed and permitted off-site treatment, storage or disposal capacity becomes available; to clarify that such on-site storage, which is compelled by the current lack of licensed treatment or disposal capacity, is legitimate storage under the land disposal restriction ('LDR') storage prohibition at 40 CFR 268.50; and to make such rule immediately effective as an interim final rule.'' While the approach in the petition differs from the approach in this ANPR, EPA seeks comment on the USWAG approach described above.

The Edison Electric Institute also approached EPA requesting relief from permit requirements for the storage of mixed wastes. The nuclear power industry maintains that NRC management requirements for the radioactive component of their mixed waste streams provide complete protection for human health and the environment. NRC requirements for radioactive waste storage areas include security, frequent monitoring, primary containment, secondary containment for liquids, and cover for protection from the elements. EPA is studying NRC requirements for low-level radioactive waste storage to determine whether the mixed waste storage under NRC (or Agreement State) regulations, license provisions, and guidance may be as protective of human health and the environment as the RCRA requirements for storage of hazardous waste.

E. Policy of Lower Enforcement Priority for Mixed Waste

EPA LDR treatment standards exist for the hazardous components of most mixed wastes. However, adequate treatment technology or disposal capacity does not exist for some mixed waste streams, necessitating storage in violation of land disposal restrictions. Recognizing this difficulty, EPA issued a policy on the lower priority of enforcement of the storage prohibition contained in section 3004(j) of RCRA (see 56 FR 42730; August 29, 1991). Section 3004(j) prohibits storage of a land disposal restricted waste (including mixed waste) except for the purposes of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal. Because treatment technology or disposal capacity was still unavailable for some mixed wastes, EPA extended this policy on October 31, 1998. The policy stated that violators who were faced with an impossibility of complying with the RCRA regulations and were storing their wastes in an environmentally responsible manner would be a low enforcement priority for EPA. The extension of the policy was published in the **Federal Register** on November 6, 1998. (63 FR 59989)

The policy affects only mixed wastes that are prohibited from land disposal under the RCRA Land Disposal Restrictions and for which there are no available options for treatment or disposal. For mixed waste generators who are storing mixed wastes in an environmentally responsible manner, as described in the policy, and where no viable treatment technology or disposal capacity exists, or becomes available during this extension, we consider violations of RCRA section 3004(j) involving relatively small volumes of waste to be a low priority among our potential civil enforcement actions. An enforcement activity arising from violations of section 3004(j) as these facilities will generally focus on determining whether these generators are managing their mixed wastes in an environmentally responsible manner, and whether they are storing wastes for which treatment technology is commercially available. EPA recently extended the policy of lowered enforcement priority to April 30, 2001.

VI. What Regulatory Efforts Affecting Mixed Waste Are Underway at EPA?

We recognize that mixed waste storage and disposal may be significantly affected by other EPA rulemakings, especially the Hazardous Waste Identification Rule (HWIR). These activities will be closely monitored for impacts to a mixed waste storage and disposal rulemaking, for areas of overlapping analysis, and for opportunities to coordinate.

A. April 1997 Consent Decree and Mixed Waste Rulemaking Commitment

Commercial nuclear power plants through their trade organizations (i.e., the Edison Electric Institute, the Utility Solid Waste Activity Group, and the Nuclear Energy Institute) were parties to the settlement discussions regarding the deadline for the final Hazardous Waste Identification Rule (HWIR) Rulemaking, *ETC* v. *Browner*, CIV, No. 94–2119 (D.D.C.), During negotiations, they expressed their interest in regulatory flexibility to allow the disposal of mixed waste in commercial low-level radioactive waste disposal sites. There discussions resulted in a final consent decree which requires EPA to publish a proposed rule that requests comment on an exemption from hazardous waste disposal regulation for mixed wastes from nuclear power plants. The proposal must also request comment on other regulatory relief for these wastes, if EPA finds that any other relief would be appropriate. EPA is also committed to make ''best efforts'' to describe the exemptions in enough detail to allow it to promulgate a final rule. The decree requires EPA to issue the proposal by October 31, 1999.

EPA made several commitments to the litigants in a ''sidebar'' letter which was not submitted to the Court. EPA committed to issue a final rule addressing relief for mixed wastes from nuclear power plants by April 30, 2001. EPA also agreed to recommend in writing to EPA Regions and RCRA authorized States that ''they suspend the call-in or processing of final RCRA Part B permits at power plants subject to regulation under the AEA by NRC or NRC Agreement States where the only reason for a Part B permit is the on-site storage of mixed waste...'' Such a letter to States and Regions was signed on May 21, 1997. In the letter EPA's Office of Solid Waste (OSW) recommended the temporary suspension of call-in and processing of RCRA Part B applications, and the issuance of RCRA permits for facilities that have *interim status only for the purpose of on-site storage of commercial and mixed wastes.* This permit suspension applies where the facility is not otherwise subject to RCRA permitting requirements. OSW did not recommend any suspension for facilities where Regions or States find a particular environmental concern that merits the call-in issuance of such a permit.

EPA also committed in the side-bar letter to examining potential regulatory change related to the disposal of mixed waste in radioactive waste disposal facilities subject to NRC regulation. (A summary of disposal issues follows.) EPA is considering regulatory flexibility by examining opportunities related to mixed waste permitting and storage. In today's ANPR we are seeking comment from interested parties on mixed waste storage options. The October 1999 Proposed Rulemaking on mixed waste will address disposal and storage issues.

B. Summary or Approach for Mixed Waste Disposal

We are considering a regulatory exemption from the RCRA hazardous waste disposal requirements for low-level radioactive mixed wastes containing low concentrations of RCRA hazardous constituents which may be disposed at low-level radioactive waste disposal facilities. We will determine whether the disposal of mixed waste in facilities designed to address radiological hazards under the AEA and regulated by NRC will provide adequate protection of human health and the environment from chemical hazards. We may propose that these mixed wastes would not be regulated as hazardous waste if disposed at radioactive waste disposal facilities subject to NRC or NRC Agreement State requirements. We are formulating the scope and form of such a proposal.

C. Hazardous Waste Identification Rulemaking (HWIR)

The goal of HWIR is to develop a set of chemical concentration levels (''exit levels'') below which a list waste would no longer be regulated as a hazardous waste. In addition to the proposed exit levels, the HWIR reproposal will seek comment on a variety of implementation requirements, including testing, notification, record keeping and reporting and public participation.

RCRA's hazardous waste program sometimes regulates comparatively low risk waste at the same stringent standards as higher risk waste. This system leaves companies little incentive to detoxify there list hazardous wastes, since the wastes continue to be regulated as hazardous, unless formally delisted. WHIR relies on an innovative risk assessment to identify the levels of hazardous chemicals in waste that can be safely disposed in a non-hazardous unit. HWIR will propose exit levels which allow waste management based on the risks posed by the waste. Thus the HWIR proposed focuses resources on risk reduction and encourages pollution prevention and development of treatment technologies. HWIR is scheduled to be proposed by October 31, 1999 and finalized by April 30, 2001.

D. Waste Management Proposal by EPA's Office of Radiation and Indoor Air (ORIA)

Under the AEA, EPA has authority to establish generally applicable radiation standards. ORIA is developing a proposal under the AEA that would apply to disposal of mixed wastes with very low concentrations of radionuclides in RCRA Subtitle C hazardous waste landfills. Under this approach, EPA would establish maximum concentration limits for radionuclides in mixed waste allowed for disposal in such facilities. Radionuclides would continue to be regulated under the AEA; EPA would seek to have the Nuclear Regulatory Commission regulate mixed waste in RCRA facilities through a simplified license based on the requirements for low-level radioactive waste disposal facilities in 10 CFR part 61. RCRA disposal facilities that wish to accept mixed waste under this rule would need to obtain such a license from the NRC. This proposed rulemaking is planned for publication in the **Federal Register** in 1999.

VII. Regulatory Assessment Requirements

A. Executive Order (E.O.) 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel

legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

While this advance notice of proposed rulemaking establishes no regulatory requirements it could ultimately result in a rule that would satisfy one or more of the above criteria. Therefore, this action is a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Under the terms of E.O. 12866, EPA is to prepare for any significant regulatory action an assessment of its potential costs and benefits. If that action satisfies the first of the criteria listed above, this assessment must include, to the extent feasible, a quantification of these costs and benefits, the underlying analyses supporting such quantification, and an assessment of the costs and benefits of reasonably feasible alternatives to the planned regulation. Because the purpose of this ANPR is to initiate a structured national debate on a broad set of issues rather than to proposed specific regulatory changes, it is not feasible to quantify the costs and benefits or any resulting regulations at this time. The Agency is aware, however, that his ANPR could lead to regulatory action for which the preparation of a quantitative assessment of costs and benefits would be appropriate. The Agency is thus requesting comment on the costs and benefits of any of the possible regulatory changes discussed in this ANPR, as well as on appropriate methodologies for assessing them. The Agency would be interested in hearing from States and Tribes. Members of the public and the regulated community are also encouraged to submit any data they may have on the costs and benefits of activities described in this ANPR.

B. Executive Order (E.O.) 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 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 EPA complies by consulting, Executive Order 12875 requires EPA to 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 ANPR does not create a mandate on State, local or tribal governments. This ANPR does not impose any enforceable duties on these entities. It solicits comments on potential approaches to regulatory flexibility. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this ANPR.

C. Executive Order (E.O.) 13084: Consultation with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 EPA complies by consulting, Executive Order 13084 requires EPA to 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 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 ANPR does not significantly or uniquely affect the communities of Indian tribal governments because it does not impose any enforceable duties on these entities. This ANPR solicits voluntary comments on potential approaches to regulatory flexibility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this ANPR.

D. Executive Order (E.O.) 13045: Children's Health Protection

Executive Order 13045 applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk addressed by the rule has 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.

E.O. 13045 applies to notices of proposed and final rulemakings, therefore, it does not apply to this advance notice of proposed rulemaking. Should this advance notice of proposed rulemaking result in a rulemaking proposal, the Agency will evaluate the proposal to determine if E.O. 13045 applies.

E. The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

Under the RFA, (5 U.S.C. 601 *et seq.*), as amended by SBREFA, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the effect of the regulatory action on small entities. However, no regulatory flexibility analysis is required if the head of an Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the RFA to require Federal agencies to provide a statement of the factual bases for certifying that a rule will not have a significant economic impact on a substantial number of small entities. However, since this requirement applies to proposed rules only, and as this Document is an ANPR, these requirements do not apply.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may

result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's ANPR contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. The ANPR also imposes no enforceable duty on any State, local or tribal governments or the private sector.

G. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub.L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This ANPR does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Paperwork Reduction Act

Under the implementing regulations for the Paperwork Reduction Act, an agency is required to certify that any agency-sponsored collection of information from the public is necessary for the proper performance of its functions, has practical utility, is not unnecessarily duplicative of information otherwise reasonably accessible to the agency, and reduces to the extent practicable and appropriate the burden on those required to provide the information (5 CFR 1320.9). Any proposed collection of information must be submitted, along with this certification, to the Office of Management and Budget for approval before it goes into effect.

Some of the approaches for regulatory flexibility discussed in the ANPR could entail new reporting and recordkeeping requirements for States and Tribes and/or members of the regulated public if such change is proposed. EPA is interested in comments on any and all aspects of potential paperwork requirements, and in particular on how they should be structured to fulfill the requirements that they have practical utility, are not unnecessarily duplicative of other available information, and are the least burdensome necessary to ensure that the storage and treatment of mixed waste is safely managed.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded that this ANPR will have no impact whatsoever on low-income or minority populations because it only solicits voluntary comments on potential approaches to regulatory flexibility.

Dated: February 22, 1999.

Carol M. Browner,

Administrator, Environmental Protection Agency.

[FR Doc. 99–4829 Filed 2–26–99; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
March 1, 1999

Part III

Department of Education

Office of Vocational And Adult Education; National Research Centers; Notice

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; National Research Centers

AGENCY: Department of Education.

ACTION: Notice of Intent to Compete the National Research Centers (National Centers or Centers) and Request for Public Comment on the Configuration of the National Centers.

SUMMARY: The Secretary of Education (Secretary) intends to establish one or more National Centers to carry out research, development, evaluation, demonstration, dissemination, and professional development activities designed to improve academic, vocational, and technical education in secondary and postsecondary institutions to prepare students for postsecondary education, careers, and lifelong learning.

DATES: Written comments must be submitted on or before March 31, 1999.

ADDRESSES: Written comments should be addressed to Dennis Berry, Director of the Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Internet address: Dennis__berry@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ricardo Hernandez, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone: 202–205–5977. Internet address: Ricardo__hernandez@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

General

The Carl D. Perkins Vocational and Technical Education Act of 1998 (Public Law 105–332) (Act), which was enacted October 31, 1998, continues to authorize the Secretary to make one or more awards to establish one or more National Centers to carry out research and dissemination to assist State and local programs to improve the quality and effectiveness of their vocational and technical education services and activities. The Act lists the entities that are eligible to receive an award to operate a National Center. In addition to institutions of higher education, which were eligible under the previous legislation, public or private nonprofit organizations or agencies, or consortia of such institutions, organizations, or agencies, are now eligible to compete to receive awards.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this notice.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4512, 330 C Street, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Intent To Hold a Competition

The grants awarded to the University of California at Berkeley to operate the current National Center for Research in Vocational Education will end in December 1999. Before that time, the Secretary will designate one or more new National Centers to carry out the activities described in section 114(c)(5) of the Act. The Secretary expects that the simultaneous operation of the old and new centers for a short period will facilitate as seamless a transition as possible with a minimum disruption of services. The Secretary intends to publish a closing date notice in late spring or early summer of 1999 to announce one or more competitions for funding the National Centers. Applicants will be given approximately 60 days, from the date the closing date notice is published in the **Federal Register**, to develop and submit applications. Through this notice of intent, the Secretary is providing early notification of the Department's plans to hold one or more competitions under the authority of section 114(c)(5) and (6) of the Act. The Secretary encourages interested institutions of higher education, public or private nonprofit organizations or agencies, or consortia of these institutions, organizations, or agencies, to begin planning for the upcoming grant competitions.

Issues for Public Comment

The enactment of the Carl D. Perkins Vocational and Technical Education Act of 1998 marks the beginning of new opportunities in vocational and technical education. The Act recognizes that *all* students must meet challenging academic standards and be prepared for postsecondary education and lifelong learning and that *all* students must prepare for careers—not just entry-level jobs. The Act challenges the Department to provide leadership and be proactive in carrying out its vision of vocational and technical education, and thereby assist State and local programs to improve the quality and effectiveness of vocational and technical education.

The Secretary believes National Centers have a unique role that enables them to serve as effective catalysts for program improvement. In this regard, the Secretary believes that in carrying out section 114(c)(5) of the Act, National Centers should—

(a) Build a knowledge base that is critical to increasing the quality and improving the effectiveness of vocational and technical education programs;

(b) Help to redefine vocational education and spearhead conversations on reform;

(c) Conduct research that contributes significantly to both theory and practice, especially in areas that are relevant to practitioners and in emerging areas of practice that are not well defined; and

(d) Translate research into practice for teachers, counselors, administrators, and policy makers through dissemination, professional development, and technical assistance.

The Act specifically charges the Secretary with establishing one or more National Centers to—

(a) Carry out research for the purpose of developing, improving, and identifying the most successful methods for addressing the education, employment, and training needs of participants in vocational and technical education programs, including research and evaluation in such activities as—

(1) The integration of vocational and technical instruction, and academic, secondary and postsecondary instruction;

(2) Education technology and distance learning approaches and strategies that are effective with respect to vocational and technical education;

(3) ''State-adjusted levels of performance'' and ''State levels of performance'' that serve to improve

vocational and technical education programs and student achievement; and

(4) Academic knowledge and vocational and technical skills required for employment or participation in postsecondary education.

(b) Carry out research to increase the effectiveness and improve the implementation of vocational and technical education programs, including conducting research and development, and carrying out studies that provide longitudinal information or formative evaluation with respect to vocational and technical education programs and student achievement.

(c) Carry out research that can be used to improve professional development and learning in the vocational and technical education classroom, including—

(1) Effective in-service and pre-service teacher education that assists vocational and technical education systems; and

(2) Dissemination and training activities related to the applied research and demonstration activities described in section 114(c) of the Act, which may also include serving as a repository for information on vocational and technical skills, State academic standards, and related materials.

(d) Carry out any other research the Secretary determines appropriate to assist State and local recipients of funds under the Act.

(e) Carry out dissemination and training activities based upon the research previously described.

The Secretary may also authorize Centers to—

(a) Carry out demonstration vocational and technical education programs, to replicate model vocational and technical education programs, to disseminate best practices information, and to provide technical assistance upon request of a State, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing vocational and technical education programs assisted under the Act.

(b) Carry out a demonstration partnership project involving a 4-year, accredited postsecondary institution, in cooperation with local public education organizations, volunteer groups, and private-sector business participants to provide program support, and facilities for education, training, tutoring, counseling, employment preparation, and specific skills training in emerging and established professions, and for retraining of military medical personnel, individuals displaced by corporate or military restructuring, and migrant workers, as well as other individuals who otherwise do not have access to these services, through multi-site, multi-State distance learning technologies.

1. Structuring the National Centers

In this notice, the Secretary presents a few options for structuring these National Centers, to initiate discussion. However, comments should not be limited to or restricted by the options and questions presented.

Possible Structures

Generally, section 114(c)(5) and (6) of the Act provides for research, development, evaluation, demonstration, dissemination, and professional development activities to be carried out at the National Centers. The Act requires each National Center to carry out dissemination and training activities based on the research performed by the Center. In addition, it authorizes the Secretary to support dissemination separately, either through a demonstration program or a Center. Should the Secretary decide to support a separate Center to carry out dissemination and training activities, that Center would provide a vehicle for a more comprehensive and extensive dissemination of the research produced by the National Centers and other research or information on successful practices.

Option 1. One center would carry out all of the activities (research, development, demonstration, evaluation, comprehensive dissemination, and professional development) of the National Centers.

Option 2. One center would carry out research, development, demonstration, evaluation, dissemination and professional development for secondary education issues.

A second center would carry out research, development, demonstration, evaluation, dissemination and professional development for postsecondary education issues.

A third center would carry out comprehensive dissemination activities for both secondary and postsecondary education.

Option 3. One center would carry out research, development, and dissemination on all issues.

A second center would carry out comprehensive dissemination and professional development.

Option 4. One center would focus on long-range research allowing for longitudinal studies, evaluations, or data collections, which extend beyond a calendar year. Other long-range research might relate to comprehensive demonstrations and validating promising practices. The center would also carry out dissemination and professional development activities that relate to its research.

A second center would focus on short-term research issues that could be completed in a year or less. The center would also carry out dissemination and professional development activities that relate to its research.

A third center would carry out comprehensive dissemination and professional development activities.

Option 5. One center would focus on academically oriented research such as testing the efficacy of various theoretical approaches, or measuring the effect of a specific educational initiative.

A second center would focus on applied research, demonstrations, developing and improving successful methods, providing technical assistance to States in developing and implementing measures of performance, and evaluating program effectiveness.

Each center would carry out dissemination and professional development activities that address its specific audiences.

Option 6. One center would focus on research (e.g., long-term, short-term, applied, theoretical, evaluation, data analysis) and demonstration issues. The center would also carry out dissemination and professional development activities that relate to its research.

A second center would focus on professional development and leadership issues, e.g., training education personnel to use the most successful methods for addressing the education, employment, and training needs of participants in vocational and technical education programs, and offering pre-service and in-service training, including internships and fellowships.

A third center would focus on comprehensive dissemination activities.

2. Questions

In addition to inviting comments on the structure of the proposed National Centers, the Secretary is also interested in receiving views in response to several questions that relate to the scope of the Centers:

(a) Are there specific research activities the Centers should undertake in order to assist State and local vocational and technical education programs?

(b) What theoretical and applied research should the Centers undertake?

(c) What are effective ways to ensure maximum coordination and synergy among the Centers if there is more than one Center?

(d) Should the National Centers provide technical assistance to State and

local programs in adopting/adapting successful practices? What types of technical assistance are needed most?

(e) To what extent should the work of the Centers inform and be informed by other similar international research institutes and Centers?

(f) How should the relevance, quality, and timeliness of a Center's work be measured in order to inform decisions on whether to continue a National Center?

3. Naming the National Centers

The Secretary is also interested in receiving views on possible names for the new National Centers. Changes in the legislation provide new opportunities. A new name for the Centers could help to emphasize the changes, opportunities and new thrusts of the Act. Previously, the National Centers were called the ''National Center for Research in Vocational Education''. A possible new name could be the ''National Centers for Research in Technical and Professional Education''.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

Anyone also may view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G–Files/Announcements, Bulletins and Press Releases.

Additionally, this notice, as well as other documents concerning the implementation of the national centers, is available on the World Wide Web at the following site: http://www.ed.gov/offices/OVAE/ncrperk111.html.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: Public Law 105–332.

Dated: February 24, 1999.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 99–5011 Filed 2–26–99; 8:45 am]

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federal register

Monday
March 1, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA) Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–4450–N–01]

RIN 2502–AH33

Real Estate Settlement Procedures Act (RESPA) Statement of Policy 1999–1 Regarding Lender Payments to Mortgage Brokers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Statement of Policy 1999–1.

SUMMARY: This Statement of Policy sets forth the Department of Housing and Urban Development's position on the legality of lender payments to mortgage brokers in connection with federally related mortgage loans under the Real Estate Settlement Procedures Act (''RESPA'') and HUD's implementing regulations. While this statement satisfies the Conferees' directive in the Conference Report on the 1999 HUD Appropriations Act that the Department clarify its position on this subject, HUD believes that broad legislative reform along the lines specified in the HUD/Federal Reserve Board Report remains the most effective way to resolve the difficulties and legal uncertainties under RESPA and the Truth in Lending Act (TILA) for industry and consumers alike. Statutory changes like those recommended in the Report would, if adopted, provide the most balanced approach to resolving these contentious issues by providing consumers with better and firmer information about the costs associated with home-secured credit transactions and providing creditors and mortgage brokers with clearer rules. Such an approach is far preferable to piecemeal actions.

EFFECTIVE DATE: This Statement of Policy is effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Holtz, Director RESPA/ILS Division Room 9146, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–4560, or (for legal questions) Kenneth A. Markison, Assistant General Counsel for GSE/RESPA or Rodrigo Alba, Attorney for RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–3137 (these are not toll free numbers). Hearing or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This Preamble to the Statement of Policy includes descriptions of current practices in the industry. It is not intended to take positions with respect to the legality or illegality of any practices; such positions are set forth in the Statement of Policy itself.

I. Background

A. General Background

The Conference Report on the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (H.R. Conf. Rep. No. 105–769, 105th Cong., 2d Sess. 260 (1998)) (FY 1999 HUD Appropriations Act) directs HUD to clarify its position on lender payments to mortgage brokers within 90 days after the enactment of the FY 1999 HUD Appropriations Act on October 21, 1998. The Report states that ''Congress never intended payments by lenders to mortgage brokers for goods or facilities actually furnished or for services actually performed to be violations of [Sections 8](a) or (b) of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA)]'' (Id.). The Report also states that the Conferees ''are concerned about the legal uncertainty that continues absent such a policy statement'' and ''expect HUD to work with representatives of industry, Federal agencies, consumer groups, and other interested parties on this policy statement'' (Id.).

This issue of lender payments, or indirect fees, to mortgage brokers has proven particularly troublesome for industry and consumers alike. It has been the subject of litigation in more than 150 cases nationwide (see additional discussion below). To understand the issue and HUD's position regarding the legality of these payments requires background information concerning the nature of the services provided by mortgage brokers and their compensation, as well as the applicable legal requirements under RESPA.

During the last seven years, HUD has conducted three rulemakings respecting mortgage broker fees. These rulemakings first addressed definitional issues and issues concerning disclosure of payments to mortgage brokers in transactions covered under RESPA. (See 57 FR 49600 (November 2, 1992); 60 FR 47650 (September 13, 1995).) Most recently in a regulatory negotiation (see 60 FR 54794 (October 25, 1995) and 60 FR 63008 (December 8, 1995)) and then a proposed rule (62 FR 53912 (October 16, 1997)), HUD addressed the issue of the legality of payments to brokers under RESPA. In the latter, HUD proposed that payments from lenders to mortgage brokers be presumed legal if the mortgage broker met certain specified conditions, including disclosing its role in the transaction and its total compensation through a binding contract with the borrower. This rulemaking is pending.

In July 1998, HUD and the Board of Governors of the Federal Reserve delivered to Congress a joint report containing legislative proposals to reform RESPA and the Truth in Lending Act. If the proposals in this reform package were to be adopted, the disclosure and legality issues raised herein would be resolved for any mortgage broker following certain of the proposed requirements, and consumers would be offered significant new protections.

B. Mortgage Brokerage Industry

When RESPA was enacted in 1974, single family mortgages were largely originated and held by savings and loans, commercial banks, and mortgage bankers. During the 1980's and 1990's, the rise of secondary mortgage market financing resulted in new wholesale and retail entities to compete with the traditional funding entities to provide mortgage financing. This made possible the origination of loans by retail entities that worked with prospective borrowers, collected application information, and otherwise processed the data required to complete the mortgage transaction. These retail entities generally operated with the intent of developing the origination package, and then immediately transmitting it to a wholesale lender who funded the loan. The rise in technology permitted much more effective and faster exchange of information and funds between originators and lenders for the retail transaction.

Entities that provide mortgage origination or retail services and that bring a borrower and a lender together to obtain a loan (usually without providing the funds for loans) are generally referred to as ''mortgage brokers.'' These entities serve as intermediaries between the consumer and the entity funding the loan, and currently initiate an estimated half of all home mortgages made each year in the United States. Mortgage brokers generally fit into two broad categories: those that hold themselves out as representing the borrower in shopping for a loan, and those that simply offer loans as do other retailers of loans. The first type may have an agency relationship with the borrower and, in some states, may be found to owe a

responsibility to the borrower in connection with the agency representation. The second type, while not representing the borrower, may make loans available to consumers from any number of funding sources with which the mortgage broker has a business relationship.

Mortgage brokers provide various services in processing mortgage loans, such as filling out the application, ordering required reports and documents, counseling the borrower and participating in the loan closing. They may also offer goods and facilities, such as reports, equipment, and office space to carry out their functions. The level of services mortgage brokers provide in particular transactions depends on the level of difficulty involved in qualifying applicants for particular loan programs. For example, applicants have differences in credit ratings, employment status, levels of debt, or experience that will translate into various degrees of effort required for processing a loan. Also, the mortgage broker may be required to perform various levels of services under different servicing or processing arrangements with wholesale lenders.

Mortgage brokers vary in their methods of collecting compensation for their work in arranging, processing, and closing mortgage loans. In a given transaction, a broker may receive compensation directly from the borrower, indirectly in fees paid by the wholesaler or lender providing the mortgage loan funds, or through a combination of both.

Where a broker receives direct compensation from a borrower, the broker's fee is likely charged to the borrower at or before closing, as a percentage of the loan amount (e.g., 1% of the loan amount) and through direct fees (such as an application fee, document preparation fee, processing fee, etc.).

Brokers also may receive indirect compensation from lenders or wholesalers. Such indirect fees may be referred to as ''back funded payments,'' ''servicing release premiums,'' or ''yield spread premiums.'' These indirect fees paid to mortgage brokers may be based upon the interest rate of each loan entered into by the broker with the borrower. These fees have been the subject of much contention and litigation. Another method of indirect compensation, also the subject of significant controversy and uncertainty, is ''volume-based'' compensation. This generally involves compensation to a mortgage broker by a lender based on the volume of loans that the mortgage broker delivers to the lender in a fixed period of time. The compensation may come in the form of: (1) a cash payment to the broker based on the amount of loans the broker delivers to the lender in excess of a ''threshold'' or ''floor amount''; or (2) provision of a lower ''start rate'' (often called a discount) for such loans; the compensation to the broker results from the difference in yield between the ''start rate'' and the loan rate. Volume based compensation may be received at settlement or well after a particular loan has closed.

Payments to brokers by lenders, characterized as yield spread premiums, are based on the interest rate and points of the loan entered into as compared to the par rate offered by the lender to the mortgage broker for that particular loan (e.g., a loan of 8% and no points where the par rate is 7.50% will command a greater premium for the broker than a loan with a par rate of 7.75% and no points).[1] In determining the price of a loan, mortgage brokers rely on rate quotes issued by lenders, sometimes several times a day. When a lender agrees to purchase a loan from a broker, the broker receives the then applicable pricing for the loan based on the difference between the rate reflected in the rate quote and the rate of the loan entered into by the borrower. In some cases, the broker can increase its revenues by arranging a loan with the consumer at a particular rate and then, based on market changes or other factors which decrease the par rate, increase his or her fees. Some consumers allege that the compensation system for brokers results in higher loan rates for borrowers and/or that this compensation system is illegal under RESPA.

Lender payments to mortgage brokers may reduce the up-front costs to consumers. This allows consumers to obtain loans without paying direct fees themselves.[2] Where a broker is not compensated by the consumer through a direct fee, or is partially compensated through a direct fee, the interest rate of the loan is increased to compensate the broker or the fee is added to principal. In any of the compensation methods described, all costs are ultimately paid by the consumer, whether through direct fees or through the interest rate.

[1] The term ''par rate'' refers to the rate offered to the broker (through the lender's price sheets) at which the lender will fund 100% of the loan with no premiums or discounts to the broker.

[2] In many instances, these loans are called ''no cost'' or ''no fee'' loans. This terminology, however, may prove confusing because in such cases the costs are still paid by the borrower through a higher interest rate on the loan or by adding fees to principal. HUD's regulations implementing RESPA use the name ''no cost'' or ''no point'' loans consistent with industry practice.

C. Coverage of This Policy Statement

HUD's RESPA rules, found at 24 CFR part 3500 (Regulation X), define a mortgage broker to be ''a person (not an employee or exclusive agent of a lender) who brings a borrower and lender together to obtain a federally-related mortgage loan, and who renders * * * 'settlement services' '' (24 CFR 3500.2(b)). In table funding, mortgage brokers may process and close loans in their own names. However, at or about the time of settlement, they transfer these loans to the lender, and the lender simultaneously advances the monies to fund the loan. In transactions where mortgage brokers function as intermediaries, the broker also provides loan origination services, but the loan funds are provided by the lender and the loan is closed in the lender's name.

In other cases, mortgage brokers may originate and close loans in their own name using their own funds or warehouse lines of credit, and then sell the loans after settlement in the secondary market. In such transactions, mortgage brokers effectively act as lenders under HUD's RESPA rules. Accordingly, the transfer of the loan obligation by, and payment to, these brokers after the initial funding is outside of RESPA's coverage under the secondary market exemption, found at 24 CFR 3500.5(b)(7), which states that payments to and from other loan sources following settlement are exempt from disclosure requirements and Section 8 restrictions. HUD's rule provides that in determining what constitutes a *bona fide* transfer in the secondary market, HUD considers the real source of funding and the real interest of the funding lender. (24 CFR 3500.5(b)(7).)

Because this Statement of Policy focuses on the legality of lender payments to mortgage brokers in transactions subject to RESPA, the coverage of this statement is restricted to payments to mortgage brokers in table-funded and intermediary broker transactions. Lender payments to mortgage brokers where mortgage brokers initially fund the loan and then sell the loan after settlement are outside the coverage of this statement as exempt from RESPA under the secondary market exemption.

D. RESPA and Its Legislative History

In enacting RESPA, Congress sought to protect the American home-buying public from unreasonably and unnecessarily inflated prices in the home purchasing process (S. Rep. No. 93–866 (1974) *reprinted in* 1974

U.S.C.C.A.N. 6548). Section 2 of the Act provides:

''significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. * * * It is the purpose of this act to effect certain changes in the settlement process for residential real estate that will result—

in more effective advance disclosure to home buyers and sellers of settlement costs; [and]

(2) In the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services. * * *'' 12 U.S.C. 2601.

Section 4(a) of RESPA requires the Secretary to create a uniform settlement statement which ''shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement'' (12 U.S.C. 2603(a)).

Section 5(c) of RESPA requires the provision of a ''good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Secretary'' (12 U.S.C. 2604(c)).

Section 8(a) of RESPA, prohibits any person from giving and any person from accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding that business shall be referred to any person. (See 12 U.S.C. 2607(a).) Section 8(b) also prohibits anyone from giving or accepting any portion, split, or percentage of any charge made or received for the rendering of a settlement service other than for services actually performed. (12 U.S.C. 2607(b).) Section 8(c) of RESPA provides, however, that nothing in Section 8 shall be construed as prohibiting the payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or services actually performed. (12 U.S.C. 2607(c)(2).)

Under Section 19 of RESPA, HUD is authorized to issue rules, establish exemptions, and make such interpretations as is necessary to implement the law. (12 U.S.C. 2618(a).)

RESPA's legislative history refers to HUD–VA Reports and subsequent hearings by the Housing Subcommittee as defining ''major problem areas that [had to] be dealt with if settlement costs are to be kept within reasonable bounds.'' (S. Rep. No. 93–866, at 6547.) One ''major problem area'' identified was the ''[a]busive and unreasonable practices within the real estate settlement process that increase settlement costs to home buyers without providing any real benefits to them.'' Another major concern was ''[t]he lack of understanding on the part of most home buyers about the settlement process and its costs, which lack of understanding makes it difficult for a free market for settlement services to function at maximum efficiency.''

The legislative history reveals that Congress intended RESPA to guard against these unreasonable and excessive settlement costs in two ways. Under Section 4, Congress sought to ''mak[e] information on the settlement process available to home buyers in advance of settlement and requir[e] advance disclosures of settlement charges.'' (S. Rep. 93–866, at 6548.) The Senate Report explained that ''home buyers who would otherwise shop around for settlement services, and thereby reduce their overall settlement costs, are prevented from doing so because frequently they are not apprised of the costs of these services until the settlement date or are not aware of the nature of the settlement services that will be provided.''

Under Section 8, Congress sought to eliminate what it termed ''abusive practices''—kickbacks, referral fees, and unearned fees. In enacting these prohibitions, Congress intended that ''the costs to the American home buying public will not be unreasonably or unnecessarily inflated.'' (S. Rep. 93–866 at 6548.) In describing the Section 8 provisions, the Senate Report explained that RESPA ''is intended to prohibit all * * * referral fee arrangements whereby any payment is made or 'thing of value' is provided for the referral of real estate settlement business.'' (S. Rep. 93–866, at 6551.)

The legislative history adds that ''[t]o the extent the payment is in excess of the reasonable value of the goods provided or services performed, the excess may be considered a kickback or referral fee proscribed by Section [8].'' (S. Rep. 93–866, at 6551.) The Senate Report states that ''reasonable payments in return for services actually performed or goods actually furnished'' were not intended to be prohibited (Id).[3] It also provided that ''[t]hose persons and companies that provide settlement services should therefore take measures to ensure that any payments they make or commissions they give are not out of line with the reasonable value of the services received.'' (*Id.*)

The Department has consistently held that the prohibitions under Section 8 of RESPA cover the activities of mortgage brokers, because RESPA applies to the origination, processing, and funding of a federally related mortgage loan. This became an issue when, in 1984, the 6th Circuit Court of Appeals held that in applying Section 8 as a criminal statute, the definition of settlement services did not clearly extend to the making of a mortgage loan. (*U.S.* versus *Graham Mortgage Corp.*, 740 F.2d 414 (6th Cir. 1984).) In 1992, Congress responded by amending RESPA to remove any doubt that, for purposes of RESPA, a settlement service includes the origination and making of a mortgage loan. (Section 908 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992; 104 Stat. 4413). At the same time, Congress also specifically made RESPA applicable to second mortgages and refinancings. (*Id.*)

E. HUD's RESPA Rules

On November 2, 1992 (57 FR 49600), the Department issued a major revision of Regulation X, the rule interpreting RESPA. The rule defined the term ''mortgage broker'' for the first time. Under the rule, mortgage brokers are required to disclose direct and indirect payments on the Good Faith Estimate (GFE) no later than 3 days after loan application. (See 24 CFR 3500.7(a) and (c).) Such disclosure must also be provided to consumers, as a final figure, at closing on the settlement statement. (24 CFR 3500.8; 24 CFR part 3500, Appendix A (Instructions for Filling Out the HUD–1 and HUD–1A).) On the GFE and the settlement statement, lender-paid mortgage broker fees must be shown as ''Paid Outside of Closing'' (P.O.C.), and not computed in arriving at totals. (See 24 CFR 3500.7(a)(2) and 24 CFR part 3500, Appendix A.) The 1992 rule treats mortgage brokers as settlement service providers whose fees are disbursed at or before settlement, akin to title agents, attorneys, appraisers, etc., whose fees are subject to disclosure and otherwise subject to RESPA, including Section 8.

The 1992 rule did not explicitly take a position on whether yield spread premiums or any other named class of back-funded or indirect fees paid by lenders to brokers are *per se* legal or illegal. By illustration, codified as Illustrations of Requirements of RESPA, Fact Situations 5 and 12 in Appendix B

[3] One of the examples of abusive activities listed in the legislative history that RESPA was intended to remedy is ''a title insurance company [that] may give 10% or more of the title insurance premium to an attorney who may perform no services for the title insurance company other than placing a telephone call to the company or filling out a simple application.'' (S. Rep. 93–866, at 6551.) Accordingly, where insufficient services are provided, RESPA is intended to prohibit payment.

to 24 CFR part 3500, the 1992 rule specifically listed ''servicing release premiums'' and ''yield spread premiums'' as fees required to be itemized on the settlement statement. Although the 1992 rule specifically acknowledged the existence of such fees and provided illustrations of how they were to be denominated on HUD disclosure forms, this requirement was intended to ensure their disclosure, but not to create a presumption of *per se* legality or illegality.

The anti-kickback, anti-referral fee and unearned fee provisions of RESPA are implemented by 24 CFR 3500.14. Regulation X repeats the Section 8 prohibitions against compensation for the referral of settlement service business and for the giving or accepting of any portion, split or percentage of any charge other than for services actually rendered. (24 CFR 3500.14(c).) Regulation X provides that a charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates the unearned fee prohibition. (See 24 CFR 3500.14(c).) Moreover, 24 CFR 3500.14(g)(1)(iv) clarifies that Section 8 of RESPA permits ''[a] payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.''

The Department's regulations provide, under 24 CFR 3500.14(g)(2), that:

> The Department may investigate high prices to see if they are the result of a referral fee or a split of a fee. *If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided.* These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. * * * (emphasis supplied).

In addition, Regulation X clarifies that ''[w]hen a person in a position to refer settlement service business * * * receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.'' (24 CFR 3500.14(g)(3).)

Since 1992, HUD has provided various interpretations and other issuances under these rules stating the Department's position that the legality of a payment to a mortgage broker is not premised on the name of the particular fee. Rather, HUD has consistently advised that the issue under RESPA is whether the compensation to a mortgage broker in covered transactions is reasonably related to the value of the goods or facilities actually furnished or services actually performed. If the compensation, or a portion thereof, is not reasonably related to the goods or facilities actually furnished or the services actually performed, there is a compensated referral or an unearned fee in violation of Section 8(a) or 8(b) of RESPA, whether the compensation is a direct or indirect payment or a combination thereof.

F. Recent HUD Rulemaking Efforts

The Department received comments on the 1992 rule's requirement that mortgage brokers disclose indirect payments from lenders on the GFE and the settlement statement. In response, the Department reviewed whether the disclosure of indirect or back-funded fees is necessary or in the borrower's interest and whether additional rulemaking was needed to clarify the legality of fees to mortgage brokers. Brokers had alleged that these disclosures were confusing to consumers and disadvantaged brokers as compared to other originators who were within the secondary market exemption and were not required to disclose their compensation for the subsequent sale of the loan. Consumer representatives said that consumers needed to understand the existence of indirect fees and whether brokers represented consumers in shopping for loans. On September 13, 1995, the Department issued a proposed rule (60 FR 47650) and in December 1995 through May 1996, embarked on a negotiated rulemaking on these subjects.

Although the negotiated rulemaking did not result in consensus, on October 16, 1997, HUD published a proposed rule (62 FR 53912) that was shaped by views from both industry and consumer representatives provided during the negotiated rulemaking (as well as by comments received from the September 13, 1995, proposed rule (60 FR 47650)). The 1997 proposed rule proposed a qualified ''safe harbor'' for payments to mortgage brokers under Section 8. Under the proposal, if a broker enters into a contract with consumers explaining the broker's functions (whether or not it represented the consumer) and the total compensation the broker would receive in the transaction, before the consumer applied for a loan, HUD would presume the broker fees, both direct and indirect, to be legal. The 1997 proposal also provided, however, that this qualified safe harbor would only be available to those payments that did not exceed a test, to be established in the rulemaking, to preclude unreasonable fees. This proposal was intended, among other things, to establish that yield spread premiums paid to brokers meeting the rule's requirements were presumed legal when brokers provided consumers with prescribed information concerning the functions and compensation of mortgage brokers. The Department has received over 9,000 comments in response to this proposed rule.

G. Litigation

During the last several years, more than 150 lawsuits have been brought seeking class action certification based in whole or in part on the theory that the making of indirect payments from lenders to mortgage brokers violates Section 8 of RESPA. In various cases, plaintiffs have argued that yield spread premiums or other denominated indirect payments to brokers, regardless of their amount, constitute prohibited referral fees under Section 8(a). These plaintiffs generally argue that yield spread premiums are payments based upon the broker's ability to deliver a loan that is above the par rate. Some lawsuits have alleged that such yield spread premiums or other indirect payments are a split of fees between the lender and the broker, or are simply unearned fees and, therefore, also violate Section 8(b) of RESPA. Other challenges rely, in part, on the alleged unreasonableness of brokers' fees. These complaints assert that under the RESPA regulations, payments must bear a reasonable relationship to the market value of the good or the service provided and that payments in excess of such amounts must be regarded as forbidden referral fees.

Many of the lawsuits involve allegations that consumers were not informed by mortgage brokers concerning the mortgage brokers' role and compensation. A common element in many allegations is that borrowers were not informed about the existence or the amount of the yield spread premiums paid to the mortgage broker, and the relationship of the yield spread premium to the direct fees that the borrower paid. The facts in these cases suggest generally that even where there were proper disclosures on the GFE and the settlement statement, borrowers allege that they were unaware of, or did not understand, that a yield spread premium was tied to the interest rate they agreed to pay, and that they could have reduced this charge or their direct

payment to the broker either by further negotiation or by engaging in additional shopping among mortgage loan providers.

Courts have been split in their decisions on these cases. Some of the decisions have concluded that yield spread premiums may be prohibited referral fees or duplicative fees in contravention of Section 8 of RESPA under the specific facts of the case. Some have held that the permissibility of yield spread premiums must be based on an analysis of whether the premiums constitute a reasonable payment, either alone or in combination with any direct fee paid by the borrower, for either the goods, services or facilities actually furnished. Because some courts have found that this necessitates an individual analysis of the facts of each transaction, some courts have denied plaintiffs' requests for class action certification. Some courts have certified a class without reaching a conclusion on the RESPA issues. Others have held that yield spread premiums constitute valid consideration to the mortgage broker in exchange for the origination of the loan and the sale of the loan to the lender. These courts have found that the payment of yield spread premiums is one method among many of compensating the broker for the origination services rendered.

H. Reform

In July 1998, the Department and the Federal Reserve Board delivered a report to Congress recommending significant improvements to streamline and simplify current RESPA and Truth In Lending Act requirements. The Report proposed that along with a tighter and more enforceable scheme for providing consumers with estimated costs for settlements, an exemption from Section 8's prohibitions should be established for those entities that offer a package of settlement services and a mortgage loan at a guaranteed price, rate and points for the package early in the consumer's process of shopping for a loan. Such an approach, which also includes other additional consumer protection recommendations, would largely resolve these issues for any mortgage broker who chooses to abide by the requirements of this exemption. The Report's consumer protection recommendations included, among other items, that Congress consider establishment of an unfair and deceptive acts and practices remedy.

Under the ''packaging'' proposal set forth in the Report, settlement costs would be controlled more effectively by market forces. Consumers would be better able to comparison-shop, thereby encouraging creditors and others to operate efficiently and pass along discounts and lower prices. In addition, the Report's recommendations would greatly simplify compliance for the industry and clarify legal uncertainties that create liability risks.

I. This Policy Statement

This policy statement provides HUD's views of the legality of fees to mortgage brokers from lenders under existing law. In accordance with the Conference Report, in developing this policy statement, HUD met with representatives of government agencies, as well as a broad range of consumer and industry groups, including the Office of Thrift Supervision, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Association of Mortgage Brokers, the Mortgage Bankers Association of America, the American Bankers Association, the Consumer Mortgage Coalition, America's Community Bankers, the Consumer Bankers Association, the Independent Bankers Association of America, AARP, the National Consumer Law Center, Consumers Union, and the National Association of Consumer Advocates.

II. RESPA Policy Statement 1999–1

A. Introduction

The Department hereby states its position on the legality of payments by lenders to mortgage brokers under the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA) and its implementing regulations at 24 CFR part 3500 (Regulation X). This Statement of Policy is issued pursuant to Section 19(a) of RESPA (12 U.S.C. 2617(a)) and 24 CFR 3500.4(a)(1)(ii). HUD is cognizant of the Conferees' statement in the Conference Report on the FY 1999 HUD Appropriations Act that ''Congress never intended payments by lenders to mortgage brokers for goods or facilities actually furnished or for services actually performed to be violations of [Sections 8](a) or (b) (12 U.S.C. Sec. 2607) in its enactment of RESPA.'' (H. Rep. 105–769, at 260.) The Department is also cognizant of the congressional intent in enacting RESPA of protecting consumers from unnecessarily high settlement charges caused by abusive practices. (12 U.S.C. 2601.)

In transactions where lenders make payments to mortgage brokers, HUD does not consider such payments (i.e., yield spread premiums or any other class of named payments), to be illegal *per se*. HUD does not view the name of the payment as the appropriate issue under RESPA. HUD's position that lender payments to mortgage brokers are not illegal *per se* does not imply, however, that yield spread premiums are legal in individual cases or classes of transactions. The fees in cases or classes of transactions are illegal if they violate the prohibitions of Section 8 of RESPA.

In determining whether a payment from a lender to a mortgage broker is permissible under Section 8 of RESPA, the first question is whether goods or facilities were actually furnished or services were actually performed for the compensation paid. The fact that goods or facilities have been actually furnished or that services have been actually performed by the mortgage broker does not by itself make the payment legal. The second question is whether the payments are reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed.

In applying this test, HUD believes that total compensation should be scrutinized to assure that it is reasonably related to goods, facilities, or services furnished or performed to determine whether it is legal under RESPA. Total compensation to a broker includes direct origination and other fees paid by the borrower, indirect fees, including those that are derived from the interest rate paid by the borrower, or a combination of some or all. The Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed. HUD believes that total compensation should be carefully considered in relation to price structures and practices in similar transactions and in similar markets.

B. Scope

In light of 24 CFR § 3500.5(b)(7), which exempts from RESPA coverage *bona fide* transfers of loan obligations in the secondary market, this policy statement encompasses only transactions where mortgage brokers are not the real source of funds (i.e., table-funded transactions or transactions involving ''intermediary'' brokers). In table-funded transactions, the mortgage broker originates, processes and closes the loan in the broker's own name and, at or about the time of settlement, there is a simultaneous advance of the loan funds by the lender and an assignment of the loan to that lender. (See 24 CFR 3500.2 (Definition of ''table funding'').) Likewise, in transactions where

mortgage brokers are intermediaries, the broker provides loan origination services and the loan funds are provided by the lender; the loan, however, is closed in the lender's name.

C. Payments Must Be for Goods, Facilities or Services

In the determination of whether payments from lenders to mortgage brokers are permissible under Section 8 of RESPA, the threshold question is whether there were goods or facilities actually furnished or services actually performed for the total compensation paid to the mortgage broker. In making the determination of whether compensable services are performed, HUD's letter to the Independent Bankers Association of America, dated February 14, 1995 (IBAA letter) may be useful. In that letter, HUD identified the following services normally performed in the origination of a loan:

(a) Taking information from the borrower and filling out the application;[4]

(b) Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;

(c) Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;

(d) Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;

(e) Initiating/ordering VOEs (verifications of employment) and VODs (verifications of deposit);

(f) Initiating/ordering requests for mortgage and other loan verifications;

(g) Initiating/ordering appraisals;

(h) Initiating/ordering inspections or engineering reports;

(i) Providing disclosures (truth in lending, good faith estimate, others) to the borrower;

(j) Assisting the borrower in understanding and clearing credit problems;

(k) Maintaining regular contact with the borrower, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;

(l) Ordering legal documents;

(m) Determining whether the property was located in a flood zone or ordering such service; and

(n) Participating in the loan closing.

While this list does not exhaust all possible settlement services, and while the advent of computer technology has, in some cases, changed how a broker's settlement services are performed, HUD believes that the letter still represents a generally accurate description of the mortgage origination process. For other services to be acknowledged as compensable under RESPA, they should be identifiable and meaningful services akin to those identified in the IBAA letter including, for example, the operation of a computer loan origination system (CLO) or an automated underwriting system (AUS).

The IBAA letter provided guidance on whether HUD would take an enforcement action under RESPA. In the context of the letter's particular facts and subject to the reasonableness test which is discussed below, HUD articulated that it generally would be satisfied that sufficient origination work was performed to justify compensation if it found that:

- The lender's agent or contractor took the application information (under item (a)); and
- The lender's agent or contractor performed at least five additional items on the list above.

In the letter and in the context of its facts, HUD also pointed out that it is concerned that a fee for steering a customer to a particular lender could be disguised as compensation for ''counseling-type'' activities. Therefore, the letter states that if an agent or contractor is relying on taking the application and performing only ''counseling type'' services—(b), (c), (d), (j), and (k) on the list above—to justify its fee, HUD would also look to see that meaningful counseling—not steering—is provided. In analyzing transactions addressed in the IBAA letter, HUD said it would be satisfied that no steering occurred if it found that:

- Counseling gave the borrower the opportunity to consider products from at least three different lenders;
- The entity performing the counseling would receive the same compensation regardless of which lender's products were ultimately selected; *and*
- Any payment made for the ''counseling-type'' services is reasonably related to the services performed and not based on the amount of loan business referred to a particular lender.

In examining services provided by mortgage brokers and payments to mortgage brokers, HUD will look at the types of origination services listed in the IBAA letter to help determine whether compensable services are performed.[5] However, the IBAA letter responded to a program where a relatively small fee was to be provided for limited services by lenders that were brokering loans.[6]

Accordingly, the formulation in the IBAA letter of the number of origination services which may be required to be performed for compensation is not dispositive in analyzing more costly mortgage broker transactions where more comprehensive services are provided. The determinative test under RESPA is the relationship of the services, goods or facilities furnished to the total compensation received by the broker (discussed below). In addition to services, mortgage brokers may furnish goods or facilities to the lender. For example, appraisals, credit reports, and other documents required for a complete loan file may be regarded as goods, and a reasonable portion of the broker's retail or ''store-front'' operation may generally be regarded as a facility for which a lender may compensate a broker. However, while a broker may be compensated for goods or facilities actually furnished or services actually performed, the loan itself, which is arranged by the mortgage broker, cannot be regarded as a ''good'' that the broker may sell to the lender and that the lender may pay for based upon the loan's yield's relation to market value, reasonable or otherwise. In other words, in the context of a non-secondary market mortgage broker transaction, under HUD's rules, it is not proper to argue that a loan is a ''good,'' in the sense of an instrument bearing a particular yield, thus justifying any yield spread premium to the mortgage broker, however great, on the grounds that such yield spread premium is the ''market value'' of the good.

D. Compensation Must Be Reasonably Related to Value of Goods, Facilities or Services

The fact that goods or facilities have been actually furnished or that services have been actually performed by the mortgage broker, as described in the IBAA letter, does not by itself make a payment by a lender to a mortgage

[4] In a subsequent informal interpretation, dated June 20, 1995, HUD stated that the filling out of a mortgage loan application could be substituted by a comparable activity, such as the filling out of a borrower's worksheet.

[5] In the June 20, 1995 letter, the Department clarified that the counseling test in the IBAA letter would not apply if an entity performed only non-counseling services (a, e, f, g, h, i, l, m, n) or a mix of counseling and non-counseling services (but did not rely only on the five counseling services (b, c, d, j, and k)).

[6] In the particular program reviewed by HUD in the IBAA letter, the average total compensation for performing six of the origination services listed above was below $200.

broker legal. The next inquiry is whether the payment is reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed. Although RESPA is not a rate-making statute, HUD is authorized to ensure that payments from lenders to mortgage brokers are reasonably related to the value of the goods or facilities actually furnished or services actually performed, and are not compensation for the referrals of business, splits of fees or unearned fees.

In analyzing whether a particular payment or fee bears a reasonable relationship to the value of the goods or facilities actually furnished or services actually performed, HUD believes that payments must be commensurate with that amount normally charged for similar services, goods or facilities. This analysis requires careful consideration of fees paid in relation to price structures and practices in similar transactions and in similar markets.[7] If the payment or a portion thereof bears no reasonable relationship to the market value of the goods, facilities or services provided, the excess over the market rate may be used as evidence of a compensated referral or an unearned fee in violation of Section 8(a) or (b) of RESPA. (See 24 CFR 3500.14(g)(2).) Moreover, HUD also believes that the market price used to determine whether a particular payment meets the reasonableness test may not include a referral fee or unearned fee, because such fees are prohibited by RESPA. Congress was clear that for payments to be legal under Section 8, they must bear a reasonable relationship to the value received by the person or company making the payment. (S. Rep. 93–866, at 6551.)

The Department recognizes that some of the goods or facilities actually furnished or services actually performed by the broker in originating a loan are ''for'' the lender and other goods or facilities actually furnished or services actually performed are ''for'' the borrower. HUD does not believe that it is necessary or even feasible to identify or allocate which facilities, goods or services are performed or provided for the lender, for the consumer, or as a function of State or Federal law. All services, goods and facilities inure to the benefit of both the borrower and the lender in the sense that they make the loan transaction possible (e.g., an appraisal is necessary to assure that the lender has adequate security, as well as to advise the borrower of the value of the property and to complete the borrower's loan).

The consumer is ultimately purchasing the total loan and is ultimately paying for all the services needed to create the loan. All compensation to the broker either is paid by the borrower in the form of fees or points, directly or by addition to principal, or is derived from the interest rate of the loan paid by the borrower. Accordingly, in analyzing whether lender payments to mortgage brokers comport with the requirements of Section 8 of RESPA, HUD believes that the totality of the compensation to the mortgage broker for the loan must be examined. For example, if the lender pays the mortgage broker $600 and the borrower pays the mortgage broker $500, the total compensation of $1,100 would be examined to determine whether it is reasonably related to the goods or facilities actually furnished or services actually performed by the broker.

Therefore, in applying this test, HUD believes that total compensation should be scrutinized to assure that it is reasonably related to goods, facilities, or services furnished or performed to determine whether total compensation is legal under RESPA. Total compensation to a broker includes direct origination and other fees paid by the borrower, indirect fees, including those that are derived from the interest rate paid by the borrower, or a combination of some or all. All payments, including payments based upon a percentage of the loan amount, are subject to the reasonableness test defined above. In applying this test, the Department considers that higher interest rates alone cannot justify higher total fees to mortgage brokers. All fees will be scrutinized as part of total compensation to determine that total compensation is reasonably related to the goods or facilities actually furnished or services actually performed.

In so-called ''no-cost'' loans, borrowers accept a higher interest rate in order to reduce direct fees, and the absence of direct payments to the mortgage broker is made up by higher indirect fees (e.g., yield spread premiums). Higher indirect fees in such arrangements are legal if, and only if, the total compensation is reasonably related to the goods or facilities actually furnished or services actually performed.

In determining whether the compensation paid to a mortgage broker is reasonably related to the goods or facilities actually furnished or services actually performed, HUD will consider all compensation, including any volume based compensation. In this analysis, there may be no payments merely for referrals of business under Section 8 of RESPA. (See 24 CFR 3500.14.)[8]

Under HUD's rules, when a person in a position to refer settlement service business receives a payment for providing additional settlement services as part of the transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by the person. (24 CFR 3500.14(g)(3).) While mortgage brokers may receive part of their compensation from a lender, where the lender payment duplicates direct compensation paid by the borrower for goods or facilities actually furnished or services actually performed, Section 8 is violated. In light of the fact that the borrower and the lender may both contribute to some items, HUD believes that it is best to evaluate seemingly duplicative fees by analyzing total compensation under the reasonableness test described above.

E. Information Provided to Borrower

Under current RESPA rules mortgage brokers are required to disclose estimated direct and indirect fees on the Good Faith Estimate (GFE) no later than 3 days after loan application. (See 24 CFR 3500.7(a) and (b).) Such disclosure must also be provided to consumers, as a final exact figure, at closing on the settlement statement. (24 CFR 3500.8; 24 CFR part 3500, Appendix A.) On the GFE and the settlement statement, lender payments to mortgage brokers must be shown as ''Paid Outside of Closing'' (P.O.C.), and are not computed in arriving at totals. (24 CFR 3500.7(a)(2).) The requirement that all fees be disclosed on the GFE is intended to assure that consumers are shown the full amount of compensation to brokers and others early in the transaction.

The Department has always indicated that any fees charged in settlement transactions should be clearly disclosed so that the consumer can understand the nature and recipient of the payment. Code-like abbreviations like ''YSP to DBG, POC'', for instance, have been noted.[9] Also, the Department has seen

[7] HUD recognizes that settlement costs may vary in different markets. The cost of a specific service in Omaha, Nebraska, for example, may bear little resemblance to the cost of a similar service in Los Angeles, California.

[8] The Department generally has held that when the payment is based on the volume or value of business transacted, it is evidence of an agreement for the referral of business (unless, for example, it is shown that payments are for legitimate business reasons unrelated to the value of the referrals). (See 24 CFR 3500.14(e).)

[9] This is an example only. HUD recognizes that current practices may leave borrowers confused. However, the use of any particular terms, including abbreviations, may not, by itself, violate RESPA. Nevertheless, going forward, HUD recommends that

examples on the GFE and/or the settlement statement where the identity and/or purpose of the fees are not clearly disclosed.

The Department considers unclear and confusing disclosures to be contrary to the statute's and the regulation's purposes of making RESPA-covered transactions understandable to the consumer. At a minimum, all fees to the mortgage broker are to be clearly labeled and properly estimated on the GFE. On the settlement statement, the name of the recipient of the fee (in this case, the mortgage broker) is to be clearly labeled and listed, and the fee received from a lender is to be clearly labeled and listed in the interest of clarity. For example, a fee would be appropriately disclosed as ''Mortgage broker fee from lender to XYZ Corporation (P.O.C.).'' In the interest of clarity, other fees or payments from the borrower to the mortgage broker should identify that they are mortgage broker fees from the borrower.[10]

There is no requirement under existing law that consumers be fully informed of the broker's services and compensation prior to the GFE. Nevertheless, HUD believes that the broker should provide the consumer with information about the broker's services and compensation, and agreement by the consumer to the arrangement should occur as early as possible in the process. Mortgage brokers and lenders can improve their ability to demonstrate the reasonableness of their fees if the broker discloses the nature of the broker's services and the various methods of compensation at the time the consumer first discusses the possibility of a loan with the broker.

The legislative history makes clear that RESPA was not intended to be a rate-setting statute and that Congress instead favored a market-based approach. (S. Rep. No. 93–866 at 6546 (1974).) In making the determination of whether a payment is *bona fide* compensation for goods or facilities actually furnished or services actually performed, HUD has, in the past, indicated that it would examine whether the price paid for the goods, facilities or services is truly a market price; that is, if in an arm's length transaction a purchaser would buy the services at or near the amount charged. If the fee the consumer pays is disclosed and agreed to, along with its relationship to the interest rate and points for the loan and any lender-paid fees to the broker, a market price for the services, goods or facilities could be attained. HUD believes that for the market to work effectively, borrowers should be afforded a meaningful opportunity to select the most appropriate product and determine what price they are willing to pay for the loan based on disclosures which provide clear and understandable information.

The Department reiterates its long-standing view that disclosure alone does not make illegal fees legal under RESPA. On the other hand, while under current law, pre-application disclosure to the consumer is not required, HUD believes that fuller information provided at the earliest possible moment in the shopping process would increase consumer satisfaction and reduce the possibility of misunderstanding.

HUD commends the National Association of Mortgage Brokers and the Mortgage Bankers Association of America for strongly suggesting that their members furnish consumers with a form describing the function of mortgage brokers and stating that a mortgage broker may receive a fee in the transaction from a lender.

Although this statement of policy does not mandate disclosures beyond those currently required by RESPA and Regulation X, the most effective approach to disclosure would allow a prospective borrower to properly evaluate the nature of the services and all costs for a broker transaction, and to agree to such services and costs before applying for a loan. Under such an approach, the broker would make the borrower aware of whether the broker is or is not serving as the consumer's agent to shop for a loan, and the total compensation to be paid to the mortgage broker, including the amounts of each of the fees making up that compensation. If indirect fees are paid, the consumer would be made aware of the amount of these fees and their relationship to direct fees and an increased interest rate. If the consumer may reduce the interest rate through increased fees or points, this option also would be explained. HUD recognizes that in many cases, the industry has not been using this approach because it has not been required. Moreover, new methods may require time to implement. HUD encourages these efforts going forward and believes that if these desirable disclosure practices were adhered to by all industry participants, the need for more prescriptive regulatory or legislative actions concerning this specific problem could be tempered or even made unnecessary.

While the Department is issuing this statement of policy to comply with a Congressional directive that HUD clarify its position on the legality of lender payments to mortgage brokers, HUD agrees with segments of the mortgage lending and settlement service industries and consumer representatives that legislation to improve RESPA is needed. HUD believes that broad legislative reform along the lines specified in the HUD/Federal Reserve Board Report remains the most effective way to resolve the difficulties and legal uncertainties under RESPA and TILA for industry and consumers alike. Statutory changes like those recommended in the Report would, if adopted, provide the most balanced approach to resolving these contentious issues by providing consumers with better and firmer information about the costs associated with home-secured credit transactions and providing creditors and mortgage brokers with clearer rules.

III. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this Statement of Policy under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this Statement of Policy is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the Statement of Policy subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Dated: February 22, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–4921 Filed 2–26–99; 8:45 am]

BILLING CODE 4210–27–P

the disclosures on the GFE and the settlement statement be as described in the text. HUD recognizes that system changes may require time for lenders and brokers to implement.

[10] HUD recognizes that current software may not currently accommodate these additional disclosures. Both industry and consumers would be better served if these additional disclosures were included in future forms.

federal register

Monday
March 1, 1999

Part V

Department of Health and Human Services

Office of Public Health and Science

Family Planning General Training and Technical Assistance Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Availability of Grants for Family Planning General Training and Technical Assistance Projects

AGENCY: Office of Family Planning, Office of Population Affairs, OPHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) of the Office of Population Affairs requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act. Funds are available both to train family planning personnel and to provide specialized technical assistance in order to maintain the high level of performance of family planning service projects funded under Title X of the PHS Act. Training will be provided under this announcement by general training centers in the ten Department of Health and Human Services' (DHHS) regions.

DATES: Applications must be received, or postmarked and received in time for submission to the review committee, no later than April 30, 1999.

ADDRESSES: Application kits may be requested by fax at (214) 767–3425. Application kits may also be obtained from and applications must be submitted to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT:

Program Requirements

Regional Program Consultants (RPCs) or Regional Project Officers for Family Planning: Region I, Jim Sliker—(617) 565–1060; Region II, Lucille Katz—(212) 264–2535; Region III, Louis Belmonte—(215) 861–4641; Cristino Rodriguez—(404) 562–7900; Region V, Janice Ely—(312) 886–3864; Region VI, Evelyn Glass—(214) 767–3088; Region VII, Elizabeth Curtis—(816) 426–2924; Region VIII, John McCarthy—(303) 844–6163, Extension 399; Region IX, Nadine Simons—(415) 437–7984; Region X, Janet Wildeboor—(206) 615–2776.

Administrative and Budgetary Requirements

Maudeen Pickett, Grants Management Officer, Office of Grants Management for Family Planning Services—214/767–3401.

SUPPLEMENTARY INFORMATION: Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning service personnel. (Catalog of Federal Domestic Assistance Number 93.260). This notice announces the availability of approximately $3,200,000 in funding and solicits applications for general training and technical assistance projects to assist in the establishment and operation of regional training centers in the ten PHS regions. Grants will be funded within certain ranges as set out below. Funding of individual grants within each funding range will be based on the RHA's assessment of such factors as the training and technical assistance needs within the region and the cost and availability of personnel for the project. Competing grant applications are invited for training and technical assistance projects as follows:

Region	States	Funding range
I	CN, ME, MA, NH, RI, VT	$226,000–$256,000
II	NJ, NY, PR, VI	359,000–389,000
III	DE, DC, MD, PA, VA, WV	373,000–403,000
IV	KY, MS, NC, TN, AL, FL, GA, SC	436,000–466,000
V	IL, IN, MI, MN, OH, WI	377,000–407,000
VI	AR, KA, NM, OK, TX	352,000–382,000
VII	IA, KS, MO, NE	225,000–255,000
VIII	CO, MT, ND, SD, UT, WY	219,000–249,000
IX	AZ, CA, HI, and 6 US Associated Pacific Jurisdictions	314,000–344,000
X	AK, ID, OR, WA	219,000–249,000

Additional information may be obtained from the appropriate Regional Health Administrator (RHA) at the address below:

Region I: DHHS/PHS Region, I, John F. Kennedy Federal Building, Government Center, Room 2100, Boston, MA 02203;

Region II: DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278;

Region III: DHHS/PHS Region III, 150 S. Independence Mall West, Philadelphia, PA 19106;

Region IV: DHHS/PHS Region IV, 61 Forsyth Street, Rm. 5B95, Atlanta, GA 30303;

Region V: DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603;

Region VI: DHHS/PHS Region VI, 1301 Young Street, Suite 1124, Dallas, TX 75202;

Region VII: DHHS/PHS Region VII, 601 East 12th Street, Room 210, Kansas City, MO 64016;

Region VIII: DHHS/PHS Region VIII, 1961 Stout Street, Room 498, Denver, CO 80294;

Region IX: DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102;

Region X: DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–29, Seattle 98121.

Statutory and Regulatory Background

Title X of the PHS Act, enacted Pub. L. 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment of operation and of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services and services for adolescents).'' Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities to provide the training for personnel to carry out the family planning service programs.

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety.

Role and Operation of the Training and Technical Assistance Program

The regulations set out at 42 CFR, Part 59, subpart C, define ''training'' as ''job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services.'' The purpose of the general training program is to ensure that entities that

provide family planning services have the skills, knowledge and attitudes necessary for the effective delivery of family planning services.

General training programs funded under this announcement are focused on the provision of specialized information that is science-based and that will enhance the ability of family planning providers to deliver high quality family planning services. Successful applicants will be responsible for the overall management of the general training program within the geographic area for which the grant is awarded. The PHS Project Officer will have final approval for all training plans and plans for the use of resources. Grantee plans must provide for flexibility in resource utilization, including training plan design. The applicant should demonstrate an awareness of electronic technologies and new training delivery techniques. The grantee will be required to work closely with other federal, state or local government entities, family planning providers and other community-based organizations in achieving program objectives.

Applicants should be familiar with public health initiatives and programs, such as Healthy People 2000 health promotion and disease prevention objectives for family planning, as well as Title X program regulations. In responding to the Request for Applications (RFA), the applicant must be familiar with the Title X program priorities and key issues impacting family planning identified below:

Title X Program Priorities

- Expansion and enhancement of the quality of clinical reproductive health services through partnerships with entities that have related interests and that work with similar priority populations;
- Increased emphasis on services to adolescents, including emphasis on postponement of sexual activity and more accessible provision of contraceptive counseling and services;
- Increased services to hard-to-reach populations by partnering with community-based organizations and others that have a stake in the prevention of unintended pregnancy;
- Expansion of comprehensiveness of reproduction health services, including STD and cancer screening and prevention, HIV prevention, education and counseling, and substance abuse screening and referral;
- Increased services to males, emphasizing shared responsibility for preventing unintended pregnancy and STD/HIV infection.

Key Issues

Other key issues are impacting the current and future delivery of family planning services and will require significant specialized training efforts. These issues include:

- Medicaid waivers and managed care;
- Implications of welfare reform and other issues that are affecting family planning services, such as Temporary Assistance to Needy Families (TANF) and the Children's Health Insurance Program (CHIP) as well as other Federal and State initiatives;
- Electronic technology;
- Research findings;
- Legislative mandates, such as counseling teens on involving families and avoiding coercive sexual relationships.

Specifically, the applicant will have expertise and the ability to train in areas of information, education and communication; management; and clinical activities. Within each of these areas, at a minimum, the grantee will be expected to provide training that includes the following:

Information, Education and Communication

- Assist grantees with designing, implementing and evaluating information, education and communication strategies;
- Train grantee staff on how to utilize research findings and data reports in project operations;
- Train grantee staff in the use of print and mass media to achieve program goals and objectives.

Management

- Improve the management skills of family planning grantee staff;
- Increase the ability of family planning grantee staff to assess their requirements for the design and utilization of management information systems;
- Increase the ability of family planning grantee staff to utilize computer and other electronic technologies;
- Assist grantee to structure financial systems to monitor, record and control financial resources;
- Assist grantees in implementing income generating activities and creating cost recovery mechanisms.

Clinical Activities

- Provide training to improve the performance of clinical staff involved in health care delivery;
- Convene an annual regional clinical conference for health care providers where continuing education units are provided.

Successful applicants will also need to demonstrate that they have the capacity for facilitating the provision of regional technical assistance. Technical assistance generally consists of specialized or highly skilled assistance that is usually provided to a single organization, such as the Regional Office or a grantee or clinic. The objective of this assistance is to provide projects with the technical resources needed to address Title X priorities and key issues impacting family planning. In facilitating the provision of technical assistance, the PHS Project Officer will work with the successful applicant to develop a system for providing technical assistance. All forms required for reporting and tracking technical assistance will be provided by the Project Officer. All technical assistance must have prior approval of the PHS Project Officer. The successful applicant will be responsible for identifying qualified and competent consultants who will be able to effectively address highly technical and often specialized issues that are relevant in providing family planning services. The grantee is responsible for making all necessary arrangements (transportation, per diem, fees, etc.), with consultants in association with approved requests for technical assistance. A separate budget for technical assistance will be developed between the Project Officer and the successful applicant after the training grant is awarded.

Application Requirements: Applications must be submitted on the forms supplied (PHS–5161–1, Revised 5/96) (OMB Approval No. 0937–0189) and in the manner prescribed in the application kits available from the Office of Grants Management for Family Planning Services at Dallas, TX. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Applicants should ensure that they submit their applications in accordance with the deadline requirements of this announcement. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which are postmarked or delivered to the Grants Management Office later than April 30, 1999 will be judged late and will not be

accepted for review. Applicants which do not conform to the requirements of the program announcement or meet the applicable requirements of 42 CFR part 59, subpart C, will not be accepted for review. Applicants will be notified, and applications will be returned.

Any public or private nonprofit organization or agency is eligible to apply for a grant. It is not required that an entity applying for a grant be physically located in the region to be served by the proposed project. Awards will be made only to those organizations or agencies which demonstrate the capability of providing the proposed services and which have met all applicable requirements.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations, and information included in this announcement to guide them in developing their applications. Applications should be limited to 60 double-spaced pages, not including appendices, which may provide a roster of consultants, curriculum vitae, or statements of organizational capabilities.

Application Consideration and Assessment: Eligible competing grant applications will be reviewed by a multidisciplinary panel of independent reviewers and assessed according to the following criteria:

1. The extent to which the proposed training and technical assistance program promises to fulfill the family planning services delivery needs of the area to be served, as evidenced by the applicant's ability to address the requirements set out under ''Role and Operation of the Training and Technical Assistance Program'' above and the factors set out at 42 CFR 59.206(a)(2)(i)–(iv) (35 Points);

2. The extent to which the application includes evidence of the capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (25 Points);

3. The competence of the project staff, including qualifications and experience, in relation to the services to be provided, including the extent to which the applicant demonstrates an effective system for identifying qualified and competent consultants as necessary to address highly technical and specialized issues related to the delivery of family planning services (15 points);

4. The extent to which the application reflects:

(a) The administrative and management capability and competence of the applicant, including diversity of training experience, as evidenced by other training grants and/or contracts;

(b) That the project plan adequately provides for the requirements set forth in 42 CFR 59.205; and

(c) That the proposed training and technical assistance program will increase the delivery of services to people (particularly low-income groups, with a high percentage of unmet needs for family planning services).

Total consideration for the sum of sections 4(a)–(c): (25 Points).

In making grant award decisions, the RHA will fund those projects which will, in his or her judgment, best promote the purposes of sections 1001 and 1003 of the Act, within the limits of funds available for such projects.

Grants will be available for project periods of up to three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission of the relevant SPOC. The SPOC's comment(s) should be forwarded to the Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, Texas 75202. To be considered, such comments should be received by the Office of Grants Management for Family Planning Services within 60 days of the closing date listed under ''Dates'' above.

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project applicant has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Authority: 42 U.S.C. 300a–1(a).

Dated: February 18, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–4869 Filed 2–26–99; 8:45 am]

BILLING CODE 4160–17–M

federal register

Monday
March 1, 1999

Part VI

Department of Justice

Bureau of Prisons

28 CFR Part 549

Over-The-Counter (OTC) Medications; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1086–P]

RIN 1120–AA81

Over-The-Counter (OTC) Medications

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to establish procedures governing inmate access to Over-The-Counter (OTC) medications. Selected OTC medications are currently available to the inmate population through commissary purchase. The Bureau will continue to dispense OTC medications at sick call to inmates in its medical referral facilities and to inmates in Special Housing Units. At all other Bureau institutions, the Bureau will continue to dispense OTC medications at sick call to inmates in the general population only if the inmate does not already have the OTC medication and health services staff determine the inmate has an immediate medical need which needs to be addressed before the inmate's regularly scheduled commissary visit or that the inmate is without funds. The intended effect of these procedures is to allocate medical resources in an efficient and cost effective manner and to continue to meet the medical needs of inmates.

DATES: Comments due by April 30, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to adopt regulations on Over-The-Counter (OTC) medications (28 CFR part 549, subpart B).

Previously, OTC medications were not available for sale to the inmate at the institution's commissary. OTC medications instead were provided to inmates by Bureau of Prisons staff at sick call. Selected OTC medications, however, are now being made available for sale to the inmate at the institution commissary. Therefore, it is no longer necessary for inmates to visit sick call in order to obtain OTC medications for complaints related to cosmetic, and general hygiene issues. This practice conforms to community standards where individuals are expected to meet their own cosmetic and general hygiene needs.

The Bureau will continue to provide OTC medications to inmates at sick call when the inmate does not already have the OTC medication and health services staff determine that the inmate has an immediate medical need which needs to be addressed before his or her regularly scheduled commissary visit or when the inmate is without funds.

The Bureau will also continue to provide OTC medications at sick call to inmates at its medical referral facilities such as the U.S. Medical Center for Federal Prisoners, Federal Medical Centers, psychiatric referral centers (currently FCI Butner) and to inmates in Special Housing Units. Health services staff are better able to monitor the intake of medications (both OTC and prescribed) of inmates at its medical and psychiatric referral centers if access to OTC medications is limited to sick call. Inmates in Special Housing Units do not have the same access to the institution's commissary as do inmates in the general population of the institution, but these inmates do have access to sick call.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic at the address listed above.

List of Subjects in 28 CFR Part 549

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 549 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart B, consisting of §§ 549.30 and 549.31 is added to read as follows:

Subpart B—Over-The-Counter (OTC) Medications

Sec.
549.30 Purpose and scope.
549.31 Inmates without funds.

Subpart B—Over-The-Counter (OTC) Medications

§ 549.30 Purpose and scope.

This subpart establishes procedures governing inmate access to Over-The-Counter (OTC) medications to be followed at all institutions except at the U.S. Medical Center for Federal Prisoners, Federal Medical Centers, and Bureau psychiatric referral centers, or for inmates in Administrative Detention or Special Housing Units. Inmates may purchase OTC medications which are available at the commissary. Inmates may also obtain OTC medications at sick call if the inmate does not already have the OTC medication and:

(a) Health services staff determine that the inmate has an immediate medical need which needs to be addressed before his or her regularly scheduled commissary visit; or

(b) The inmate is without funds.

§ 549.31 Inmates without funds.

The Warden shall establish procedures to provide up to two OTC medications per week for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of $6.00 for the past 30 days. An inmate without funds may obtain additional OTC medications at sick call if health services staff determine that the inmate has an immediate medical need which needs to be addressed before the inmate is again able to apply for OTC medications under this section. To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to requesting OTC medications), the Warden may impose restrictions on the provisions of this paragraph.

[FR Doc. 99–4987 Filed 2–26–99; 8:45 am]
BILLING CODE 4410–05–P

federal register

Monday
March 1, 1999

Part VII

The President

Executive Order 13114—Further Amendment to Executive Order 12852, as Amended, Extending the President's Council on Sustainable Development

Federal Register
Vol. 64, No. 39
Monday, March 1, 1999

Presidential Documents

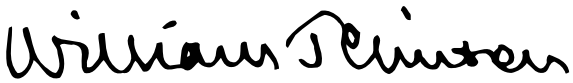
Title 3—

The President

Executive Order 13114 of February 25, 1999

Further Amendment to Executive Order 12852, as Amended, Extending the President's Council on Sustainable Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further amend Executive Order 12852, as amended, to extend the life of the President's Council on Sustainable Development, it is hereby ordered that Executive Order 12852, as amended, is further amended by deleting from section 4(b) of the order the text ''February 28, 1999'' and inserting in lieu thereof ''June 30, 1999''.



THE WHITE HOUSE,
February 25, 1999.

[FR Doc. 99–5164
Filed 2–26–99; 9:39 am]
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300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

Title	Stock Number	Price	Revision Date
200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1998
28 Parts:			
0-42	(869–034–00098–3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–034–00115–7)	51.00	July 1, 1998
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	[4] July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
201–End	(869–034–00160–2)	13.00	July 1, 1998
42 Parts:			
1–399	(869–034–00161–1)	34.00	Oct. 1, 1998
400–429	(869–034–00162–9)	41.00	Oct. 1, 1998
430–End	(869–034–00163–7)	51.00	Oct. 1, 1998
43 Parts:			
1–999	(869–034–00164–5)	30.00	Oct. 1, 1998
1000–end	(869–034–00165–3)	48.00	Oct. 1, 1998
44	(869–034–00166–1)	48.00	Oct. 1, 1998
45 Parts:			
1–199	(869–034–00167–0)	30.00	Oct. 1, 1998
200–499	(869–034–00168–8)	18.00	Oct. 1, 1998
500–1199	(869–034–00169–6)	29.00	Oct. 1, 1998
1200–End	(869–034–00170–0)	39.00	Oct. 1, 1998
46 Parts:			
1–40	(869–034–00171–8)	26.00	Oct. 1, 1998
41–69	(869–034–00172–6)	21.00	Oct. 1, 1998
70–89	(869–034–00173–4)	8.00	Oct. 1, 1998
90–139	(869–034–00174–2)	26.00	Oct. 1, 1998
140–155	(869–034–00175–1)	14.00	Oct. 1, 1998
156–165	(869–034–00176–9)	19.00	Oct. 1, 1998
166–199	(869–034–00177–7)	25.00	Oct. 1, 1998
200–499	(869–034–00178–5)	22.00	Oct. 1, 1998
500–End	(869–034–00179–3)	16.00	Oct. 1, 1998
47 Parts:			
0–19	(869–034–00180–7)	36.00	Oct. 1, 1998
20–39	(869–034–00181–5)	27.00	Oct. 1, 1998
40–69	(869–034–00182–3)	24.00	Oct. 1, 1998
70–79	(869–034–00183–1)	37.00	Oct. 1, 1998
80–End	(869–034–00184–0)	40.00	Oct. 1, 1998
48 Chapters:			
1 (Parts 1–51)	(869–034–00185–8)	51.00	Oct. 1, 1998
1 (Parts 52–99)	(869–034–00186–6)	29.00	Oct. 1, 1998
2 (Parts 201–299)	(869–034–00187–4)	34.00	Oct. 1, 1998
3–6	(869–034–00188–2)	29.00	Oct. 1, 1998
7–14	(869–034–00189–1)	32.00	Oct. 1, 1998
15–28	(869–034–00190–4)	33.00	Oct. 1, 1998
29–End	(869–034–00191–2)	24.00	Oct. 1, 1998
49 Parts:			
1–99	(869–034–00192–1)	31.00	Oct. 1, 1998
*100–185	(869–034–00193–9)	50.00	Oct. 1, 1998
186–199	(869–034–00194–7)	11.00	Oct. 1, 1998
200–399	(869–034–00195–5)	46.00	Oct. 1, 1998
400–999	(869–032–00195–2)	49.00	Oct. 1, 1997
1000–1199	(869–034–00197–1)	17.00	Oct. 1, 1998
1200–End	(869–034–00198–0)	13.00	Oct. 1, 1998
50 Parts:			
1–199	(869–034–00199–8)	42.00	Oct. 1, 1998
200–599	(869–034–00200–5)	22.00	Oct. 1, 1998
600–End	(869–034–00201–3)	33.00	Oct. 1, 1998

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1999

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 1	March 16	March 31	April 15	April 30	June 1
March 2	March 17	April 1	April 16	May 3	June 1
March 3	March 18	April 2	April 19	May 3	June 1
March 4	March 19	April 5	April 19	May 3	June 2
March 5	March 22	April 5	April 19	May 4	June 3
March 8	March 23	April 7	April 22	May 7	June 7
March 9	March 24	April 8	April 23	May 10	June 7
March 10	March 25	April 9	April 26	May 10	June 8
March 11	March 26	April 12	April 26	May 10	June 9
March 12	March 29	April 12	April 26	May 11	June 10
March 15	March 30	April 14	April 29	May 14	June 14
March 16	March 31	April 15	April 30	May 17	June 14
March 17	April 1	April 16	May 3	May 17	June 15
March 18	April 2	April 19	May 3	May 17	June 16
March 19	April 5	April 19	May 3	May 18	June 17
March 22	April 6	April 21	May 6	May 21	June 21
March 23	April 7	April 22	May 7	May 24	June 21
March 24	April 8	April 23	May 10	May 24	June 22
March 25	April 9	April 26	May 10	May 24	June 23
March 26	April 12	April 26	May 10	May 26	June 24
March 29	April 13	April 28	May 13	May 28	June 28
March 30	April 14	April 29	May 14	June 1	June 28
March 31	April 15	April 30	May 17	June 1	June 29