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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00–915–2 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados handled. The Committee is responsible for local administration of the marketing order, which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 6, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 8, 2000, and unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $164,335. The assessment rate of $0.19 is $0.03 higher than the rate currently in effect.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR parts 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, and Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The major expenditures recommended by the Committee for the

2000–2001 year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000, $39,500, $10,040, and $8,955, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Commodity shipments for the year are estimated at 900,000 55-pound bushel containers, which should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $174,431) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, § 915.41(a)(2)).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

The average grower price for fresh avocados during the 1998–99 season was $17.90 per 55-pound bushel box or equivalent for all domestic shipments and the total shipments were 890,859 bushels. Approximately 10 percent of all handlers handled 90 percent of the Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products, which are not included in the Committee's data but would contribute further to handler receipts.

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

This rule increases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent. The assessment rate of $0.19 is $0.03 higher than the 1999–2000 rate. The quantity of assessable avocados for the 2000–2001 season is estimated at 900,000 55-pound bushel containers. Thus, the $0.19 rate should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2000–2001 fiscal year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000 $39,500, $10,040, and $8,955, respectively.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR parts 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $186,333 which included increases in administrative and office salaries, and national enforcement. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed. However, the Committee ultimately determined that the recommended expenditures were appropriate to reflect its increased share of the workload and resource demands. The assessment rate of $0.19 per 55-pound bushel container or equivalent of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2000–2001 fiscal year. This is approximately $11,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2000–2001 season could be close to $17.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2000–2001 fiscal year as a percentage of total grower revenue could be one percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues.

Like all Committee meetings, the March 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the Federal Register on April 17, 2000 (65 FR 20382). Copies of the proposed rule were also mailed or sent via facsimile to all Florida avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending May 17, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2000–2001 crop avocados from growers;(2) the fiscal period began April 1, 2000, and the marketing order requires that the assessment rate apply for each fiscal period to all avocados handled during such fiscal period; (3) the Committee needs sufficient funds to pay its expenses which are incurred on a continuous basis; (4) handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting, and is similar to other assessment rate actions issued in past years; and (5) a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2000, an assessment rate of $0.19 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: May 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13980 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–307–AD; Amendment 39–11759; AD 2000–11–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires one-time inspections to detect cracking of the aft wheel well bulkhead, corrective actions, if necessary, and modification of the aft wheel well bulkhead. For certain airplanes, this AD also requires a one-time visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice area of the aft wheel well bulkhead, and corrective actions, if necessary. This amendment is prompted by a report indicating that numerous fatigue cracks were found in the aft wheel well bulkhead. The actions specified by this AD are intended to prevent fatigue cracking of the aft wheel well bulkhead, which could result in rapid in-flight decompression of the airplane.

DATES: Effective July 10, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 10, 2000.

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: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; 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 777–200 series airplanes was published in the **Federal Register** on November 26, 1999 (64 FR 66426). That action proposed to require one-time inspections to detect cracking of the aft wheel well bulkhead, and corrective actions, if necessary. That action also proposed to require modification of the aft wheel well bulkhead. For certain airplanes, that action also proposed to require a one-time visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice area of the aft wheel well bulkhead, and corrective actions, if necessary.

Explanation of Relevant Service Information

Since the issuance of the notice of proposed rulemaking (NPRM), the FAA has reviewed and approved Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000. (The original issue of the service bulletin, dated June 17, 1999, is referenced in the NPRM as the appropriate source of service information for accomplishment of the proposed actions.) The procedures described in Revision 1 of the service bulletin are similar to those in the original issue, and Revision 1 adds no new airplanes to the effectivity listing. Therefore, paragraphs (a), (b), and (d) of

this final rule have been revised to reference Revision 1 as the appropriate source of service information for accomplishment of the actions required by those paragraphs. In addition, a new ''NOTE 3'' has been added to this final rule to specify that actions accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0015, dated June 17, 1999, are considered acceptable for compliance with this AD.

Comments

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

Fleet Not Affected

On behalf of one of its members, the Air Transport Association of America (ATA) comments that none of the airplanes operated by that member would be affected by the proposal. The ATA offers no further comment and makes no request.

Request To Revise Compliance Time: Paragraph (a)(2)

One commenter requests that the FAA revise paragraph (a)(2) of the proposed rule to specify that removal of excess sealant from the aft wheel well bulkhead area is not required until accomplishment of the inspections specified in paragraph (b) of the proposed rule. [Paragraph (a)(2) of the proposed rule states that, if any excess sealant is found, it must be removed from the aft wheel well bulkhead area prior to further flight.] The commenter points out that the excess sealant is of concern because it can impede the inspections to detect fatigue cracking that are specified in paragraph (b) of the proposed rule, but the excess sealant on its own poses no threat to the continued safe operation of an airplane.

The FAA does not concur with the commenter's request. The compliance time is the same for the requirements of both paragraphs (a) and (b). Therefore, the FAA expects the requirements of these paragraphs will be accomplished at the same time. No change to the final rule is necessary in this regard.

Request To Remove Airplane from Effectivity

One commenter requests that the FAA revise the applicability of the proposed rule to delete the airplane having line number 1. The commenter states that this airplane is owned by the manufacturer and is operated in accordance with an experimental airworthiness certificate. The commenter asserts that this airplane does not accumulate enough flight cycles to develop significant fatigue cracking of the aft wheel well bulkhead. The commenter also states that, if the airplane is sold, the manufacturer will incorporate a design change equivalent to the requirements of this AD prior to delivery. The commenter claims that inclusion of the subject airplane in the applicability of this AD will ''introduce additional unnecessary complications in obtaining certification of this airplane.''

The FAA does not concur with the commenter's request. Though the airplane is operated in accordance with an experimental airworthiness certificate, the airplane is still subject to the unsafe condition addressed in this AD. Based on the current utilization of the airplane, the FAA acknowledges that it may be some time before the airplane will be required to be in compliance with this AD. However, eventually, the airplane must be inspected and modified in accordance with this AD, or modified with a design change that will provide an equivalent level of safety. Any design change that the manufacturer develops in lieu of the actions required by this AD must be approved as an alternative method of compliance in accordance with paragraph (e) of this AD. No change to the final rule is necessary in this regard.

Request To Revise Compliance Time: Paragraph (d)

One commenter requests that the compliance time stated for removal of excess sealant specified in paragraph (d) of the proposed rule be revised from ''prior to further flight'' to ''prior to the threshold specified for fatigue inspections in Section 9 of the 777 Maintenance Planning Document [MPD]. . . .'' The commenter states that the removal of the excess sealant in the area described in paragraph (d) of the proposed rule is intended to allow the fatigue inspections specified in Section 9 of the MPD to be properly conducted. The commenter states that the paragraph, as worded in the proposed rule, ''can be interpreted to mean that the sealant must be removed to facilitate fatigue inspection of these areas at 11,000 flights.'' Further, the commenter states, ''There is no data to suggest that these areas would be subject to significant fatigue cracking earlier than the threshold specified in the MPD (currently 30,000 flights for all Structures items).''

The FAA does not concur with the commenter's request. Excess sealant may impede detection of unexpected damage during general visual inspections performed as part of routine maintenance. Thus, the FAA finds it is necessary to require the sealant to be removed prior to further flight after accomplishment of the modification in accordance with paragraph (b) of this AD. No change to the final rule is necessary in this regard.

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 109 Boeing Model 777–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD.

For all airplanes, it will take approximately 2 work hours per airplane to accomplish the required general visual and HFEC inspections at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $4,200, or $120 per airplane.

For all airplanes, it will take approximately 28 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will cost approximately $6,013 per airplane. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $269,255, or $7,693 per airplane.

For certain airplanes, it will take 3 work hours per airplane to accomplish the inspection to detect excess sealant at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $180 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 a substantial direct effect 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, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

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:

2000–11–11 Boeing: Amendment 39–11759. Docket 99–NM–307–AD.

Applicability: Model 777–200 series airplanes having line numbers 1 through 144; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the aft wheel well bulkhead, which could result in rapid in-flight decompression of the airplane, accomplish the following:

General Visual Inspection

(a) For Group 1 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000: Prior to the accumulation of 11,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time general visual inspection to detect excess sealant covering the outer flange of the side fitting and lower chord and splice of the aft wheel well bulkhead, in accordance with Part I of the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 3: Inspections and modifications accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–53A0015, dated June 17, 1999, are considered acceptable for compliance with paragraphs (a), (b), and (d) of this AD.

(1) If no excess sealant is detected, no further action is required by this paragraph.

(2) If any excess sealant is detected, prior to further flight, remove the excess sealant from the aft wheel well bulkhead area in accordance with the service bulletin.

Inspections/Modification

(b) For Groups 1 and 2 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000: Prior to the accumulation of 11,000 total flight cycles, or within 4,000 flight cycles after the effective date of this AD, whichever occurs later, perform a one-time general visual inspection to detect cracking of the adjacent structure of the aft wheel well bulkhead and perform a one-time high frequency eddy current (HFEC) inspection to detect cracking of the fastener holes in the web, side fitting, and outer chord of the aft wheel well bulkhead, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(1) If no cracking is detected during the general visual and HFEC inspections, prior to further flight, modify the aft wheel well bulkhead (including cold working; replacing the fairing support bracket and splice plates with revised fairing support brackets and splice plates; and installing new web doublers and, if necessary, shims), in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(2) If any cracking is detected during the general visual inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(3) If any cracking is detected during the one-time HFEC inspection, prior to further flight, remove additional fasteners, and perform a second HFEC inspection to detect cracking of the fastener holes, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(i) If no cracking is detected during the second HFEC inspection, prior to further flight, oversize all the holes to the diameter specified in the service bulletin, and perform a third HFEC inspection to detect cracking of the fastener holes, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(A) If no cracking is detected during the third HFEC inspection, prior to further flight, replace the fasteners with new fasteners and modify the aft wheel well bulkhead (including cold working; replacing the fairing support bracket and splice plates with revised fairing support brackets and splice plates; and installing new web doublers and, if necessary, shims), in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(B) If any cracking is detected during the third HFEC inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

(ii) If any cracking is detected during the second HFEC inspection, prior to further flight, accomplish the requirements of paragraph (c) of this AD.

Repair

(c) For airplanes on which cracking has been detected during any inspection required by paragraph (b)(2), (b)(3)(i)(B), or (b)(3)(ii) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Airplane Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Removal of Excess Sealant

(d) For Group 1 airplanes, as identified in Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000, on which excess sealant was detected and removed in accordance with paragraph (a) of this AD: Prior to further flight following the accomplishment of the modification required by paragraph (b) of this AD, remove any excess sealant in the remaining area of the lower lobe of the aft wheel well bulkhead between stringers S–27L and S–27R, in accordance with the service bulletin.

Alternative Methods of Compliance

(e) 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 ACO. 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 4: 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

(f) 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

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 777–53A0015, Revision 1, dated March 2, 2000. 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.

(h) This amendment becomes effective on July 10, 2000.

Issued in Renton, Washington, on May 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–13565 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–36–AD; Amendment 39–11763; AD 2000–11–15]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal Inc.) ALF502R and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 series Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action requires an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. This action is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective July 10, 2000.

ADDRESSES: The rules docket may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

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 AlliedSignal Inc. ALF502R and LF507 series turbofan engines was published in the **Federal Register** on August 5, 1999 (64 FR 42619). That action proposed to require revisions to Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 engine manual, and, for air carriers, their approved continuous airworthiness maintenance program. Honeywell International Inc. (formerly AlliedSignal Inc.), the manufacturer of ALF502R and LF507 series turbofan engines, has provided the FAA with a detailed proposal that identifies and prioritizes the critical rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than at specific inspection intervals.

Comment Received

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

The commenter supports the rule as proposed.

The FAA notes that several different companies have held the type certificate for these engine models. In order to make certain that all manuals are revised to include the enhanced inspection program, not just the manuals that bear the name of the current holder of the type certificate, the FAA has added the names of the former type certificate holders to paragraph (a). 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 this change. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

The FAA estimates that 200 engines installed on airplanes of US registry would be affected by this AD, that it would take approximately 56 work hours per engine to accomplish the required actions. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on US operators is estimated to be $672,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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:

2000–11–15 Honeywell International Inc.: Amendment 39–11763. Docket 99–NE–36–AD.

Applicability: Honeywell International Inc. (formerly AlliedSignal, Textron Lycoming and Avco Lycoming) ALF502R and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A, AVRO 146–RJ85A, and AVRO 146–100A 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 Engine Manuals, and the appropriate manuals of former type certificate holders of the engine design including: Allied Signal Inc.; Textron Lycoming, Stratford Division; Avco Lycoming, Stratford Division and Avco Lycoming Engine Group, Stratford Division, Connecticut, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Chapter 5, Airworthiness Limitations Section, Mandatory Inspections:

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part number (P/N)	Inspect per engine manual chapter
For ALF502R series turbofan engines:		
Fan Disc	All	72–31–07 Inspection/Check.
First Turbine Disc	All	72–51–12 Inspection/Check.
Second Turbine Disc	All	72–51–21 Inspection/Check.
Impeller	All	72–34–38 Inspection/Check.
LPT Shaft/3rd Turbine	All	72–52–03 Inspection/Check.
Fourth Turbine Disc	All	72-52–06 Inspection/Check.
For LF507 series turbofan engines:		
Fan Disc	All	72–31–08 Inspection/Check.
First Turbine Disc	All	72–51–11 Inspection/Check.
Second Turbine Disc	All	72–51–20 Inspection/Check.
Impeller	All	72–34–20 Inspection/Check.
LPT Shaft/3rd Turbine	All	72–52–24 Inspection/Check.
Fourth Turbine Disc	All	72–52–03 Inspection/Check.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's Engine Manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with Chapter 5, Airworthiness Limitations section, of the Honeywell International Inc. ALF502R and LF507 Engine Manuals.

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

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

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] must maintain records of the mandatory inspections that result from revising the Engine Manual's Chapter 5, Airworthiness Limitations section, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380 (a) (2) (vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their

continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

(f) This amendment becomes effective on July 10, 2000.

Issued in Burlington, Massachusetts, on May 26, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–13873 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA52

Annual Reporting and Disclosure Requirements; Correction

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to the regulations governing annual reporting and disclosure requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document contains a technical correction to those amendments.

DATES: This correction is effective on May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps at (202) 219–8515 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 19, 2000, the Pension and Welfare Benefits Administration published in the **Federal Register** (65 FR 21068) amendments to Department of Labor regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. In publishing these regulations, the Department amended the summary annual report forms at 29 CFR 2520.104b–10(d)(3) and (4), but inadvertently omitted a change to reflect the fact that under the ERISA Filing Acceptance System (EFAST) annual returns/reports are filed with the Pension and Welfare Benefits Administration rather than the Internal Revenue Service. A technical correction amendment to the final rule is, therefore, necessary.

Correction of Publication

Accordingly, the publication of the final rule on April 19, 2000 (65 FR 21068) which was the subject of FR Doc. 00–9611 is corrected, with respect to the amendments to 29 CFR 2520.104b–10, as follows:

§ 2520.104b–10 [Corrected]

On page 21085, column 3, remove paragraph d. and add in its place a revised paragraph d. to read as follows:

d. Paragraphs (d)(3) and (d)(4) are amended as follows:

1. The second sentence of the introductory text under the heading ''SUMMARY ANNUAL REPORT FOR (NAME OF PLAN)'' the term ''Internal Revenue Service'' is removed and the term ''Pension and Welfare Benefits Administration'' is added in its place;

2. The last sentence under the heading ''Your Rights to Additional Information'' is removed and the following sentence is added in its place: ''Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.''

* * * * *

Dated: May 31, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–14000 Filed 6–2–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–149–FOR]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana revised and recodified its procedural rules for adjudicatory proceedings. Indiana intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

On February 4, 2000, the Indiana Department of Natural Resources, Division of Reclamation (DoR), sent us a copy of revised and recodified procedural rules for adjudicatory proceedings under the Indiana program (Administrative Record No. IND–1685). These procedural rules are codified in the Indiana Administrative Code (IAC) at 312 IAC 3–1 and provide procedures for administrative review proceedings held before the Division of Hearings, Natural Resources Commission. The DoR submitted the revised procedural rules in response to a required program amendment that we codified at 30 CFR 914.16(ff) on October 20, 1994 (59 FR 52906).

We announced receipt of the amendment in the March 7, 2000, **Federal Register** (65 FR 11950). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on April 6, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

The Indiana rules at 312 IAC 3–1 contain procedures for adjudicatory proceedings held before the Indiana Natural Resources Commission (commission) and its administrative law judges. The rules provide procedures for filing and pursuing an administrative review of a determination by the Indiana Department of Natural Resources (department) under the Indiana program. These rules are also applicable to administrative review of decisions by the department under other State programs and of licensing and disciplinary actions by the Board of Certification of Professional Geologists. We are making findings only on those portions of the recodified rules that pertain to administrative review under the Indiana program. The term ''director'' in Indiana's rules refers to the ''director of the Indiana Department of Natural Resources.''

1. Repeal and Recodification

a. 312 IAC 3 Adjudicatory Proceedings

We previously approved procedural rules at 310 IAC 0.6–1 for adjudicatory proceedings under the Indiana program. In 1996, the commission repealed the procedural rules at 310 IAC 0.6–1 and revised and recodified their substantive requirements at 312 IAC 3–1. The department is responsible for implementing the rules under Title 310 of the IAC. The commission is responsible for implementing the rules under Title 312 of the IAC. We find that the commission's recodification of its procedures for conducting adjudicatory proceedings for the Indiana program under its rules at Title 312 is appropriate and does not make Indiana's rules for administrative review proceedings less effective than the Federal regulations at 43 CFR Part 4.

b. 310 IAC 0.7–3–5 Delegations for Programs Administered by the Division of Reclamation

We previously approved Indiana's rule at 310 IAC 0.7–3–5 concerning delegations for programs administered by the DoR. This rule was referenced in the procedural rules at 310 IAC 0.6–1–3 and was specific to the Indiana program. In 1996, the commission repealed this rule. There is no Federal counterpart to Indiana's rule at 310 IAC 0.7–3–5, and we find that the commission's repeal of it does not make Indiana's rules less effective than the Federal regulations.

2. 312 IAC 3–1–1 Administration

Indiana's previously approved provisions at 310 IAC 0.6–1–1 (Definitions), 0.6–1–2 (Applicability of rule), and 0.6–1–3 (Review of actions taken by delegates of natural resources commission) were revised and recodified at 312 IAC 3–1–1. Subsection (a) specifies that 312 IAC 3–1 controls proceedings governed by Indiana Code (IC) 4–21.5 (administrative orders and procedures) for which the commission, or an administrative law judge for the commission, is the ultimate authority. Subsection (b) allows an affected person to apply for administrative review under IC 4–21.5 and 312 IAC 3–1 if he or she is aggrieved by a determination of the director; a delegate of the director; a board, other than the commission when acting as the ultimate authority; a delegate of the board, other than an administrative law judge; or a person delegated authority under 312 IAC 2–2. Indiana's rule at 312 IAC 2–2 governs delegations by the Natural Resources Commission. Subsection (c) defines ''division director'' as the director of the division of hearings of the commission.

While there is no direct Federal counterpart to 312 IAC 3–1–1, we find that it is not inconsistent with the Federal regulations at 43 CFR Part 4. The Federal regulations at 43 CFR Part 4 provide procedures and practices for administrative review of most decisions made under SMCRA and the Federal Regulations at 30 CFR Parts 700 through 865.

The definitions at 310 IAC 0.6–1–1 for the terms ''advisory council''; ''Commission''; ''Delegate''; ''Department''; ''Director''; ''Hearing commissioner''; and ''Objections hearing'' were not recodified at 312 IAC 3–1. Because the Federal regulations do not contain similar definitions, we find that the removal of these definitions will not make Indiana's rules less effective than the Federal regulations.

3. 312 IAC 3–1–2 Ultimate Authority for the Department

Indiana's previously approved provisions at 310 IAC 0.6–1–2.5 were revised and recodified at 312 IAC 3–1–2. Subsection (a) designates the commission as the ultimate authority for the department and any department board except as provided in subsection (b). Subsection (b) designates an administrative law judge as the ultimate authority for an administrative review under: (1) an order under Indiana's Surface Coal Mining and Reclamation Act at IC 14–34, except for a proceeding concerning the approval or disapproval of a permit application or permit renewal under IC 14–34–4–13 or for suspension or revocation of a permit under IC 14–34–15–7; (2) an order granting or denying temporary relief under IC 14–34 or an order voiding, terminating, modifying, staying, or continuing an emergency or temporary order under IC 4–21.5–4; and (3) an order designated as a final order in 312 IAC 3–1–9.

While there is no Federal counterpart to 312 IAC 3–1–2, we find that it is not inconsistent with the Federal regulations concerning administrative review at 43 CFR Part 4, and we are approving it.

4. 312 IAC 3–1–3 Initiation of a Proceeding for Administrative Review

Indiana's previously approved provisions at 310 IAC 0.6–1–4 (Petition for administrative review; notice of appointment of administrative law judge) were revised and recodified at 312 IAC 3–1–3. Subsection (a) provides that a proceeding before the commission under IC 4–21.5 is initiated when one of the following is filed with the Division of Hearings: a petition for review under IC 4–21.5–3–7; a complaint under IC 4–21.5–3–8; a request for temporary relief under IC 14–34; a request to issue an emergency or other temporary order under IC 4–21.5–4 or for review of an order issued under IC 4–21.5–4; an answer to an order to show cause under 312 IAC 3–1–5; or a referral by the director of a petition for and challenge to litigation expenses under 312 IAC 3–1–13(g). Subsection (b) requires the division director to appoint an administrative law judge to conduct the proceeding as soon as practicable after the initiation of administrative review under subsection (a).

Although there is no direct counterpart to 312 IAC 3–1–3 in SMCRA or the Federal regulations, we find that its provisions are consistent with the general requirements of the Federal regulations at 43 CFR Part 4.

5. 312 IAC 3–1–4 Answers and Affirmative Defenses

Indiana's previously approved provisions at 310 IAC 0.6–1–5(a) were revised and recodified at 312 IAC 3–1–4. Subsection (a) specifies that except as provided in subsection (b) and in 312 IAC 3–1–5 and 13, the matters contained in a pleading described in 312 IAC 3–1–3(a) are considered automatically denied by any other party. Subsection (b) provides that a party wishing to assert an affirmative defense, counterclaim, or cross-claim must do so, in writing, and have the document filed and served no later than the initial prehearing conference, unless otherwise ordered by the administrative law judge.

Although there is no direct counterpart to 312 IAC 3–1–4 in SMCRA or the Federal regulations, we find that its provisions are consistent

with the general requirements of the Federal regulations at 43 CFR Part 4.

6. 312 IAC 3–1–5 Pleadings for and Disposing of a Show Cause Order Issued Under the Indiana Surface Mining Control and Reclamation Act

Indiana's previously approved provisions at 310 IAC 0.6–1–5(b) through (j) were revised and recodified at 312 IAC 3–1–5. Subsection (a) provides that 312 IAC 3–1–5 governs the suspension or revocation of a permit under IC 14–34–15–7. Subsection (b) requires the director (or a delegate of the director) to issue, to the permittee, an order of permit suspension or revocation under IC 14–34–15–7 if the director determines that a permit issued under IC 13–4.1, IC 14–34, or 310 IAC 12 should be suspended or revoked. The order of permit suspension or revocation must state that: (1) a pattern of violations of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12 exists and (2) the violations are either willfully caused by the permittee, or caused by the permittee's unwarranted failure to comply with IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. Subsection (b) further provides that, for the purposes of this subsection, the unwarranted failure of the permittee to pay any fee required under IC 13–4.1, IC 14–34, or 310 IAC 12 constitutes a pattern of violations and requires the issuance of an order of permit suspension or revocation. Subsection (c) requires the director to serve an order of permit suspension or revocation by certified mail or personal delivery. Subsection (c) also clarifies that an order of permit suspension or revocation is governed by IC 4–21.5–3–6. Subsection (d) requires a permittee, who wants to contest an order of permit suspension or revocation, to file a petition for review under IC 4–21.5–3–7 within thirty days of his or her receipt of the order of permit suspension or revocation. Subsection (d) also specifies the kind of information that must be included in a petition for review, including whether the permittee wants a hearing on the order of permit suspension or revocation. Subsection (e) provides that if a petition for review is not filed by the permittee under subsection (d), the order of permit suspension or revocation will become an effective and final order of the commission without a proceeding under IC 14–34–15–7(c). Subsection (f) provides that if a petition for review is filed by the permittee under subsection (d) and a hearing on the order is sought by the permittee, the matter will be assigned to an administrative law judge for a proceeding under IC 4–21.5–3. Subsection (f) also sets out the burden of proof standards for the hearing. The director has the burden of going forward with evidence demonstrating that the permit in question should be suspended or revoked. The director satisfies the burden by establishing a prima facie case that a pattern of violations exists or has existed and the violations were willfully caused by the permittee or caused by the unwarranted failure of the permittee to comply with any requirements of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit conditions required under IC 13–4.1, IC 14–34, or 310 IAC 12. If the director demonstrates that the permit should be suspended or revoked, the permittee has the ultimate burden of persuasion to show cause why the permit should not be suspended or revoked. A permittee may not challenge the fact of any violation that is the subject of a final order of the director.

Subsection (g) provides that the administrative law judge will issue a nonfinal order if he or she determines that a pattern of violations exists or has existed. In this nonfinal order, the administrative law judge must consider the factors contained in 310 IAC 12–6–6.5. The administrative law judge must find that sufficient violations occurred to establish a pattern. The nonfinal order must comply with the requirements of IC 4–21.5–3–27(a) through IC 4–21.5–3–27(d) and IC 4–21.5–3–27(g). The administrative law judge may, at any time before the conclusion of the hearing, allow the parties to submit briefs and proposed findings. Subsection (h) requires the administrative law judge to submit the nonfinal order to the commission within ten days following the date that the hearing is closed or within ten days of the receipt of the permittee's petition for review submitted under subsection (d) if no hearing is requested by any party and it is determined that no hearing is necessary. Subsection (i) provides that a party must object to the findings and nonfinal order in writing in order to preserve for judicial review an objection to the nonfinal order of an administrative law judge. In its written objection, a party must identify the bases of the objection. The objection must be filed with the commission within 15 days after the findings and nonfinal order are served on the party. Subsection (j) requires the commission to enter a final order affirming, modifying, or vacating the administrative law judge's order of permit suspension or revocation. The final order of the commission must be entered within 45 days following the issuance of the nonfinal order. The final order of the commission must be issued 60 days following the date that the hearing record is closed by the administrative law judge or 60 days following the administrative law judge's receipt of the permittee's petition for review filed under subsection (d) if no hearing was requested by any party and the administrative law judge determined that no hearing was necessary. Subsection (k) provides that the minimum suspension period is three working days unless the commission finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of IC 13–4.1, IC 14–34, 310 IAC 12, or any permit condition required by IC 13–4.1, IC 14–34, or 310 IAC 12. The commission may impose preconditions that the permittee must satisfy before the suspension is lifted. Subsection (l) requires the commission to serve the parties with a copy of the final order. A party may then apply for judicial review under IC 4–21.5.

The commission did not recodify the provision at 310 IAC 0.6–1–5(g) that: ''Under IC 13–4.1–11–6(c), the administrative law judge shall issue the findings and a nonfinal order within sixty (60) days after conclusion of the hearing.'' We disapproved this provision in a previous final rule on October 20, 1994 (59 FR 52906), and required Indiana to delete the provision from its program (30 CFR 914.16(ff)). As noted in subsection (h), the administrative law judge must now submit a nonfinal order to the commission within ten days after the hearing closes. This will allow the commission sufficient time to issue the final order within the 60-day time period required by IC 14–34–15–7(h).

We find that the provisions at 312 IAC 3–1–5 contain adjudicatory proceedings for the suspension and revocation of permits that are the same as or similar to those contained in the Federal regulations at 30 CFR Part 843 and 43 CFR 4.1190 through 4.1196. We also find that the changes made to the requirements recodified at 312 IAC 3–1–5(h) and (j) satisfy the required amendment at 30 CFR 914.16(ff), and we are removing it.

7. 312 IAC 3–1–6 Amendment of Pleadings

Indiana's previously approved provisions at 310 IAC 0.6–1–6 were revised and recodified at 312 IAC 3–1–6. Subsection (a) provides for the amendment of petitions for administrative review filed under IC 4–

21.5–3–7. The various types of petitions that may to be amended are described in 312 IAC 3–1–3(a). A pleading may be amended once as a matter of course before a response is filed, but not later than the initial prehearing conference or 15 days before a hearing, unless otherwise allowed by the administrative law judge. Subsection (b) specifies the circumstances under which amendments in a pleading relate back to the date of the original pleading.

While there is no direct Federal counterpart, we find that 312 IAC 3–1–6 is not inconsistent with the Federal regulations at 43 CFR part 4, and we are approving it.

8. 312 IAC 3–1–7 Filing and Service of Documents

Indiana's previously approved provisions at 310 IAC 0.6–1–7 were revised and recodified at 312 IAC 3–1–7. Subsection (a) requires documents to be filed with the administrative law judge and served on all other parties. Subsection (b) allows the filing of a document with the administrative law judge to be performed by personal delivery, first class mail, certified mail, interoffice mail, fax, or electronic mail. Subsection (c) requires service of a document to be made upon the attorney or other authorized representative when a party is represented by an attorney or another authorized representative. If a party is not represented by others, service must be made upon the individual. Subsection (d) provides that filing or service by properly addressed, prepaid first class or certified mail is complete upon deposit in the United States mail. Filing or service by another method is complete upon receipt. Subsection (e) specifies that 312 IAC 3–1–7 does not modify the time in which a party may file objections under IC 4–21.5–3–29 or a petition for judicial review under IC 4–21.5–5.

We find that 312 IAC 3–1–7 contains procedures for filing and service of documents that are no less effective than the Federal regulations at 43 CFR 4.1107 and 4.1109, and we are approving it.

9. 312 IAC 3–1–8 Administrative Law Judge; Automatic Change

Indiana's previously approved provisions at 310 IAC 0.6–1–8 were revised and recodified at 312 IAC 3–1–8. Subsection (a) provides that an automatic change of an administrative law judge may be obtained under 312 IAC 3–1–8. Subsection (b) provides that a party may file a written motion for change of the administrative law judge without specifically stating the grounds for the request. A party must file the motion within ten days after the appointment of an administrative law judge. Subsection (c) requires the administrative law judge to grant the motion filed under subsection (b) and to notify the division director. The division director must inform the parties of the names of two other individuals from whom a substitute administrative law judge may be selected. A party who is opposed to the party who filed the motion under subsection (b) may, within five days, select one of the individuals named by the division director to serve as the substitute administrative law judge. The division director must select a new administrative law judge if the opposing party does not make a timely selection. Subsection (d) specifies under what circumstances an automatic change of administrative law judges under this section does not apply. This section does not apply where a previous change of administrative law judge has been requested under this section. It does not apply to a proceeding under IC 4–21.5–4 or to temporary relief under IC 13–4.1. It does not apply if an administrative law judge has issued a stay or entered an order for disposition of all or a portion of the proceeding. Finally it does not apply if the commission orders a suspension of the section because of inadequate staffing.

There is no direct counterpart Federal regulation. However, we find that 312 IAC 3–1–8 is not inconsistent with the general rules relating to procedures and practice at 43 CFR part 4, and we are approving it.

10. 312 IAC 3–1–9 Defaults, Dismissals, and Agreed Orders

Indiana's previously approved provisions at 310 IAC 0.6–1–9 (Dismissals) were revised and recodified at 312 IAC 3–1–9. Subsection (a) allows an administrative law judge to enter a final order of dismissal if the party who initiated administrative review requests the proceeding be dismissed. Subsection (b) allows an administrative law judge, on the motion of the administrative law judge or the motion of a party, to enter a proposed order of default or proposed order of dismissal under IC 4–21.5–3–24, if at least one of the following applies: (1) A party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding; (2) the party responsible for taking action does not take action on a matter for a period of at least 60 days; (3) the person seeking administrative review does not qualify for review under IC 4–21.5–3–7; or (4) a default or dismissal could be entered in a civil action. Subsection (c) allows a party to file a written motion requesting the order not be imposed. The party must file the motion within seven days after service of a proposed order of default or dismissal, or within a longer period allowed by the proposed order. During the time within which a party may file a written motion, the administrative law judge may adjourn the proceedings or conduct them without participation of the party against whom a proposed default order was issued. The administrative law judge must consider the interest of justice and the orderly and prompt conduct of the proceeding before taking either action. Subsection (d) requires the administrative law judge to issue an order of default or dismissal if the party fails to file a written motion under subsection (c). If the party has filed a written motion under subsection (c), the administrative law judge may either enter or refuse to enter an order of default or dismissal. Subsection (e) requires the administrative law judge, after issuing an order of default, but before issuing a final order or disposition, to conduct any action necessary to complete the proceeding without the participation of the party in default and determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings under IC 4–21.5–3–23 to resolve any issue of fact. Subsection (f) requires an administrative law judge to approve an agreed order entered into by the parties if it is clear and concise and lawful. Subsection (g) allows the secretary of the commission to affirm the entry of an agreed order approved by the administrative law judge under subsection (f). Subsection (h) provides that a final order entered under this section is made with prejudice unless otherwise specified in the order. A person may seek judicial review of the order under IC 4–21.5–5.

While there is no direct counterpart Federal regulation, we find that 312 IAC 3–1–9 is not inconsistent with the general rules relating to procedures and practice at 43 CFR Part 4. Therefore, we are approving it.

11. 312 IAC 3–1–10 Applicability of Rules of Trial Procedure and Rules of Evidence

Indiana's previously approved provisions at 310 IAC 0.6–1–10 (Applicability of rules of trial procedure) were revised and recodified at 312 IAC 3–1–10. This rule allows the administrative law judge to apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence as long as they are not inconsistent with IC 4–21.5 or 312 IAC 3–1.

We find that there is no Federal counterpart to Indiana's proposed rule. However, we are approving 312 IAC 3–1–10 to the extent that the rule allows an administrative law judge to apply provisions of the Indiana Rules of Trial Procedures and Indiana Rules of Evidence that are not inconsistent with SMCRA and the Federal regulations.

12. 312 IAC 3–1–11 Conduct of Hearing; Separation of Witnesses

Indiana's previously approved provisions at 310 IAC 0.6–1–11 (Conduct of hearing) were revised and recodified at 312 IAC 3–1–11. Subsection (a) requires an administrative law judge to govern the conduct of a hearing and the order of proof. Subsection (b) requires the administrative law judge to provide for a separation of witnesses on a motion by a party before the commencement of testimony.

We find that 312 IAC 3–1–11 is not inconsistent with the Federal regulations at 43 CFR 4.1121 concerning powers of administrative law judges. Therefore, we are approving the recodification and revision of this section.

13. 312 IAC 3–1–12 Nonfinal Order of the Administrative Law Judge; Oral Argument Before the Commission; Participation by Nonparties (Amicus Curiae); Disposition by the Secretary of State if No Objection Filed

At 312 IAC 3–1–12, the commission revised and recodified Indiana's previously approved provisions from 310 IAC 0.6–1–12 (Recommendations of an administrative law judge; objections). Subsection (a) provides that 312 IAC 3–1–12 governs the disposition of objections under IC 4–21.5–3–29. Subsection (b) requires a party, who wishes to contest whether objections provide reasonable particularity, to move, in writing, for a more definite statement. The administrative law judge may rule upon a motion filed under this subsection and any other motion filed subsequent to the entry of the nonfinal order, and enter an appropriate order (including removal of an item from the commission agenda). Subsection (c) requires that parties schedule objections for argument before the commission simultaneously with the presentation by the administrative law judge of findings, conclusions, and a nonfinal order. Unless otherwise ordered by the commission, argument must not exceed 10 minutes for each party and 20 minutes for each side. Subsection (d) allows a nonparty to file a brief with the commission ten days before oral argument is scheduled on objections filed under subsection (c). A copy of the brief must be served upon each party. The brief must not be more than five pages long and cannot include evidentiary matters outside the record. Unless otherwise ordered by the commission, a nonparty may also present oral argument for not more than five minutes in support of the brief. If more than one nonparty files a brief, the administrative law judge must order the consolidation of briefs if reasonably necessary to avoid injustice to a party. A nonparty who has not filed a brief at least ten days before oral argument is first scheduled on objections may participate in the argument upon the stipulation of the parties. Upon the written request of a party, subsection (e) requires the commission to provide the services of a stenographer or court reporter to record the argument. This request must be filed at least 48 hours before an oral argument to consider objections. Subsection (f) allows the secretary of the commission, as the commission's designee under IC 4–21.5–3–28(b), to affirm the findings and nonfinal order if objections are not filed. The secretary has exclusive jurisdiction to affirm, remand, or submit to the commission for final action, any findings and nonfinal order subject to this subsection. No oral argument will be conducted under this subsection unless ordered by the secretary. Subsection (g) allows a party to move to strike all or any part of objections, a brief by a nonparty, or another pleading under 312 IAC 3–1–12. The administrative law judge must act upon a motion filed under this subsection by providing relief which is consistent with IC 4–21.5 and 312 IAC 3–1.

While there are no direct Federal counterparts to most of the provisions in 312 IAC 3–1–12, the Director finds that none of the proposed rules are inconsistent with the Federal regulations at 43 CFR Part 4. Therefore, we are approving them.

14. 312 IAC 3–1–13 Awards of Litigation Expenses for Specified Proceedings

Indiana's previously approved provisions at 310 IAC 0.6–1–13 (Awards of litigation expenses for proceedings under surface coal mine reclamation law, oil and gas code, and entomology and plant pathology code) were revised and recodified at 312 IAC 3–1–13. Subsection (a) provides that 312 IAC 3–1–13 governs an award of costs and expenses reasonably incurred, including attorney fees, under IC 14–22–26–5, IC 14–24–11–5, IC 14–34–15–10, or IC 14–37–13–7. We are considering in this final rule those provisions for award of costs and expenses that pertain to Indiana's surface coal mining program under IC 14–34–15–10. The provisions at subsections (b) and (c) do not pertain to the Indiana program. The provisions at paragraphs (d), (e), (f), and (g) are applicable to administrative review proceedings under IC 14–34–15–10.

Subsection (d) provides that appropriate costs and expenses, including attorney fees, may be awarded under IC 14–34–15–10 in five instances. First, litigation costs and expenses may be awarded to any person from the permittee; but, the person must initiate or participate in an administrative proceeding reviewing enforcement. Also, a finding must be made by the administrative law judge or commission that a violation of IC 14–34, a rule adopted under IC 14–34, or a permit issued under IC 14–34 has occurred or that an imminent hazard existed and the person made a substantial contribution to the full and fair determination of the issues. However, a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Second, litigation costs and expenses may be awarded by the department to a person, other than a permittee or the permittee's authorized representative, who initiates or participates in a proceeding. The person must prevail in whole or in part, achieving at least some degree of success on the merits. A finding must also be made indicating that the person made a substantial contribution to a full and fair determination of the issues. Third, litigation costs and expenses may be awarded by the department to a permittee if the permittee demonstrates that the department issued the following orders in bad faith and for the purpose of harassing or embarrassing the permittee: a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked. Fourth, litigation costs and expenses may be awarded to a permittee from a person, where the permittee demonstrates that the person initiated a proceeding under IC 14–34–15 or participated in the proceeding in bad faith and for the purpose of harassing or embarrassing the permittee. Finally, litigation costs and expenses may be awarded to the department from a person, where the department demonstrates that the person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department. We find that the provisions of 312 IAC 3–1–12(d) are

substantively identical to 43 CFR 4.1294(a)(1) and (b) through (e).

Subsection (e) allows the commission to order a person requesting a hearing to pay the cost of the court reporter if the person requesting the hearing fails, after proper notice, to appear at the hearing. Although there is no Federal counterpart to 312 IAC 3–1–13(e), we find that the provision is reasonable and is not inconsistent with SMCRA and the Federal regulations. Therefore, we are approving it.

Subsection (f) specifies the factors that the commission must consider in determining what is a reasonable amount of attorney fees. The factors include: (1) The nature and difficulty of the proceeding; (2) the time, skill, and effort involved; (3) the fee customarily charged for similar legal services; (4) the costs involved in the proceeding; and (5) the time limitations imposed by the circumstances. For a party whose attorney is a full-time, salaried employee of the party, consideration also must be given to the prorated cost of the salary of the attorney and of the clerical or paralegal employees of the party who assisted the attorney. The employee benefits attributable to the time devoted to representation must also be considered. Although there are no direct Federal counterparts to all the factors listed in 312 IAC 3–1–13(f), we find that the provisions are reasonable and consistent with the Federal regulations at 43 CFR 4.1292(a)(3), and we are approving them.

Subsection (g) requires a party who wishes to seek litigation expenses to petition the director within 30 days after the party receives notice of the final agency action. A party wishing to challenge the petition for an award must deliver a written response to the director within 15 days of service of the petition. If a petition for seeking litigation expenses and a challenge of the petition for award are delivered to the director under this subsection, the director must refer the matter to the division of hearings so that a proceeding may be conducted under IC 4–21.5. The Federal regulation at 43 CFR 4.1291 allows a petition for fees to be filed within 45 days of receipt of the final agency action. While the time limit for filing is shorter under the Indiana rule, we find that the proposed time period is still reasonable and that 312 IAC 3–1–13(g) is no less effective than the Federal regulation. We are, therefore, approving the provisions.

15. 312 IAC 3–1–14 Court Reporter; Transcripts

Indiana's previously approved provisions at 310 IAC 0.6–1–14 were revised and recodified at 312 IAC 3–1–14. Subsection (a) requires the commission to employ and engage the services of a stenographer or court reporter, either on a full-time or a part-time basis, to record evidence taken during a hearing. Subsection (b) allows a party to obtain a transcript of the evidence by submitting a written request to the administrative law judge. Subsection (c) requires the party who requests a transcript under subsection (b) to pay the cost of the transcript. Subsection (d) provides that, upon a written request by a party filed at least 48 hours before a hearing, a court reporter who is not an employee of the commission will be engaged to record a hearing.

We find that 312 IAC 3–1–14 is no less effective than the Federal regulation at 43 CFR 4.23 that contains provisions for hearing transcripts.

16. 312 IAC 3–1–15 Quasi-declaratory Judgments

Indiana's previously approved provisions at 310 IAC 0.6–1–15 (Special status determinations) were revised and recodified at 312 IAC 3–1–15. Subsection (a) allows a person to request the department to interpret a statute or rule administered by the department as applicable to a specific factual circumstance. The request must be in writing and must describe with reasonable particularity all relevant facts. The request must cite with specificity the statutory or rule sections in issue. The request must identify any other person who may be affected by a determination of the request. Finally the request must describe the relief sought. Subsection (b) allows the director or the director's delegate to provide a written response to the request. The written response must be provided within 45 days of the request. The response may include an interpretation based upon the information provided in the request or may specify additional information needed to respond to the request. If the department needs additional information, it has an additional 45 days in which to respond. Subsection (c) provides that if the department does not respond within the periods described in subsection (b), a general denial of the request is deemed to have resulted. Subsection (d) allows the person who is seeking the request under subsection (a) to file a petition for administrative review under IC 4–21.5–3 if he or she is aggrieved by the response of the department under subsection (b) or a general denial under subsection (c). The department's response constitutes a determination of status under IC 4–21.5–3–5(a)(5). Subsection (e) provides that 312 IAC 3–1–15 does not excuse a person from a requirement to exhaust another administrative remedy provided by statute or rule. A person may not use this section to void or modify a final order entered by the department in another proceeding. A request under this section does not extend any time limitation imposed on the availability of another administrative remedy. A final order of the department under this section, which follows a contested proceeding under IC 4–21.5–3, provides the same precedent as a final order following any other contested proceeding under IC 4–21.5–3.

While there are no Federal counterparts to the provisions in 312 IAC 3–1–15, we find that the proposed rule is not inconsistent with SMCRA or the Federal regulations, and we are approving it.

17. 312 IAC 3–1–16 Continuances

Indiana's previously approved provisions at 310 IAC 0.6–1–16 were revised and recodified at 312 IAC 3–1–16. Subsection (a) provides that upon the motion of a party, a hearing may be continued by the administrative law judge and shall be continued upon a showing of good cause. Subsection (b) requires that a motion to continue a hearing because of the absence of evidence must be made by affidavit. The affidavit must show the materiality of the evidence expected to be obtained; that due diligence has been used to obtain the evidence; and where the evidence may be. If the motion is based on the absence of a witness, the party's affidavit must show: the name and residence of the witness, if known; the probability of procuring the testimony in a reasonable time; that absence of the witness was not procured by the party nor by others at the request, knowledge, or consent of the party; what facts the party believes to be true; and that the party is unable to prove the facts by another witness whose testimony can be readily procured. Subsection (c) provides that the hearing shall not be continued if, upon the receipt of a continuance motion under subsection (b), the adverse party stipulates to the truth of the facts which the party seeking the continuance said could not be presented.

There is no direct Federal counterpart to Indiana's proposed rule. However, we find that the provisions of 312 IAC 3–1–16 are not inconsistent with the Federal regulations at 43 CFR 4.1112, concerning motions, or the Federal regulations at 43 CFR 4.1121, concerning powers of administrative law judges. Therefore, we are approving them.

18. 312 IAC 3–1–17 Record of Proceedings; Adjudicative Hearings Generally; Record of the Director for Surface Coal Mining Permits

Indiana's previously approved provisions at 310 IAC 0.6–1–17 were revised and recodified at 312 IAC 3–1–17. Subsection (a) provides that the record required to be kept by an administrative law judge under IC 4–21.5–3–14 commences when a proceeding is initiated under 312 IAC 3–1–3(a) and includes the items described in IC 4–21.5–3–33. Subsection (b) provides that in addition to subsection (a), this subsection applies to a proceeding concerning the approval or disapproval of a permit application, permit revision application, or permit renewal application under IC 14–34–4–13. However, nothing in this subsection precludes the admission of testimony or exhibits that are limited to the explanation or analysis of materials included in the record before the director. Neither does this subsection preclude the manner in which the materials were applied, used, or relied upon in evaluating the application. Upon a timely objection made before or during a hearing, the administrative law judge shall exclude testimony or exhibits that are offered but that identify or otherwise address matters that are not part of the record before the director under IC 14–34–4–13. The record before the director includes: (1) The permit; (2) the permit application as defined at 310 IAC 12–0.5–10; (3) documentation given or referenced, in writing, by the applicant or an interested person for the purposes of evaluating, or documentation used by the department to evaluate, the application; (4) the analyses of the department in considering the application, including the expertise of the department's employees and references used to evaluate the application; (5) documentation received under IC 14–34–4, including the conduct and results of any informal conference or public hearing under IC 14–34–4–6; and (6) correspondence received or generated by the department relative to the application, including letters of notification, proofs of filing newspaper advertisements, and timely written comments from an interested person.

Section 514(c) of SMCRA and the Federal regulations at 30 CFR 775.11(b)(1) require that hearings conducted by State regulatory authorities on permitting decisions must be of record and adjudicatory in nature. Indiana's proposed rule meets these standards. Therefore, we find that 312 IAC 3–1–17 is no less stringent than SMCRA and no less effective than the Federal regulations.

19. 312 IAC 3–1–18 Petitions for Judicial Review

Indiana added a new section to its procedural rules at 312 IAC 3–1–18. We are considering in this final rule only those provisions in 312 IAC 3–1–18 that pertain to the Indiana program under IC 14–34. Subsection (a) requires a person, who wishes judicial review of a final agency action entered under 312 IAC 3–1, to serve copies of a petition for judicial review upon the persons described in IC 4–21.5–5–8. Subsection (b) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(1) requires to be served upon the ultimate authority for an administrative review. The address applies whether the commission or an administrative law judge is the ultimate authority. Where the department is a party to a proceeding under this rule, subsection (c) provides the address for sending a copy of the petition that IC 4–21.5–5–8(a)(4) requires to be served upon a party to a proceeding. The provisions at subsection (d) do not pertain to the Indiana program. Subsection (e) clarifies that the commission and its administrative law judge provide the forum for administrative review under this rule and that neither is a party.

Section 526(e) of SMCRA and the Federal regulations at 30 CFR 775.13(b) require that the actions of the State regulatory authority under an approved State program be subject to judicial review by a court of competent jurisdiction in accordance with State law. We find that 312 IAC 3–1–18 is not inconsistent with the requirements of section 526(e) of SMCRA or the Federal regulations at 30 CFR 775.13(b), concerning judicial review of a final agency action.

IV. Summary and Disposition of Comments

Federal Agency Comments

On February 29, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1687. We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On February 29, 2000, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1687). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP for amendments that may have an effect on historic properties. On February 29, 2000, we requested comments on Indiana's amendment (Administrative Record No. IND–1687), but neither responded to our request.

Public Comments

OSM requested public comments on the proposed amendment. By letter dated April 5, 2000, the Indiana Coal Council, Inc. (ICC) submitted comments in support of the amendment. The ICC commented that the Natural Resources Commission's Division of Hearings has earned a good reputation for impartiality and professionalism in its handling of administrative proceedings. The ICC believes that recodification and transfer of the Division of Hearings' procedural rules for administrative review proceedings from under the Indiana Department of Natural Resources' (IDNR) rules at Title 310 to under the Indiana Natural Resources Commission's rules at Title 312, ''has further strengthened and guaranteed the independence of the administrative law judges from the IDNR program staff.'' The ICC further commented that the recodification does not represent any significant substantive changes in the procedural rules applicable to legal proceedings under the Indiana program and the amendment should be approved.

As discussed above under III. Director's Finding, we are approving Indiana's proposed amendment.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on February 4, 2000. To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are

making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 17, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 4, 2000	June 5, 2000	310 IAC 0.6–1–1 through 17 [repealed]; 310 IAC 0.7–3–5 [repealed]; 312 IAC 3–1–1 through 18.

§ 914.16 [Amended]

3. Section 914.16 is amended by removing and reserving paragraph (ff).

[FR Doc. 00–13972 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG79

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This interim rule requires inclusion of a clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants or cooperative agreements for prototype projects that provide for total payments in excess of $5,000,000. This rule is published in the **Federal Register** for public comment because it directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.

DATES: The interim rule will be effective July 5, 2000. Comments on the interim rule should be submitted in writing to the address specified below on or before August 4, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Office of the Director, Defense Procurement, Attn: Ms. Teresa Brooks, PDUSD(A&T)/DP(DSPS), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 693–9616.

FOR FURTHER INFORMATION CONTACT: Teresa Brooks, (703) 695–4258.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as amended by section 804 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201 and section 241 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects.

Section 801 of the National Defense Authorization Act for Fiscal Year 2000 establishes a requirement that an ''other transaction'' agreement for a prototype project that provides for payments in a total amount in excess of $5,000,000 include a clause that provides Comptroller General access to records.

To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects. The requirement for Comptroller General access on ''other transactions'' for prototype projects that provide for payments that exceed $5,000,000 is the first statutory requirement mandating conditions that must be included in an ''other transactions'' agreement. The content of this rule may also be included in a future DoD issuance.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule requires only that the Comptroller General be provided access to records of certain projects. It does not require additional record keeping or other significant expense by project participants.

Pub. L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 3

Grant programs.

Accordingly, Title 32, Chapter 1 is amended to add part 3 to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Sec.
3.1 Purpose.
3.2 Applicability.
3.3 Definitions.
3.4 Policy.

Authority: Section 801, Pub. L. 106–65.

§ 3.1 Purpose.

This part implements section 801 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65). It establishes the requirement for the inclusion of a clause in transactions other than contracts, grants or cooperative agreements for prototype projects awarded under authority of 10 U.S.C. 2371 that provides Comptroller General access to records when payments total an amount in excess of $5,000,000.

§ 3.2 Applicability.

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as ''other transaction'' agreements and are hereafter referred to as agreements.

§ 3.3 Definitions.

Contracting activity. An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It also means elements designated by the director of a defense agency that has been delegated contracting authority through its agency charter.

Head of the contracting activity. The official who has overall responsibility for managing the contracting activity.

§ 3.4 Policy.

(a) Except as provided in paragraph (b) of this section, a clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of $5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity,

that has not entered into any other contract, grant, cooperative agreement or ''other transaction'' agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(c) The head of the contracting activity (HCA) that is carrying out the agreement may waive the applicability of the Comptroller General access requirement if the HCA determines it would not be in the public interest to apply the requirement to the agreement. The waiver will be effective with respect to the agreement only if the HCA transmits a notification of the waiver to the Committees on Armed Services of the Senate and the House of Representatives, the Comptroller General, and the Director, Defense Procurement before entering into the agreement. The notification must include the rationale for the determination.

(d) The HCA must notify the Director, Defense Procurement of situations where there is evidence that the Comptroller General Access requirement caused companies to refuse to participate or otherwise restricted the Department's access to companies that typically do not do business with the Department.

(e) In no case will the requirement to examine records under the clause referenced in paragraph (a) of this section apply to an agreement where more than three years have passed after final payment is made by the government under such an agreement.

(f) The clause referenced in paragraph (a) of this section must provide for the following:

(1) The Comptroller General of the General of the United States, in the discretion of the Comptroller General, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to, and involve transactions relating to, the agreement.

(2) Excepted from the Comptroller General Access requirement is any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other contract, grant, cooperative agreement, or ''other transaction'' agreement that provides for audit access by a government entity in the year prior to the date of the agreement.

(3) This clause shall not be construed to require any party or entity, or any subordinate element of such party or entity, that participates in the performance of the agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(4) The Comptroller General shall have access to the records described in this clause until three years after the date the final payment is made by the United States under this agreement.

(5) The recipient of the agreement shall flow down this provision to any entity that participates in the performance of the agreement.

Dated: May 24, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–13521 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 103–1b; FRL–6701–8]

Approval and Promulgation of Implementation Plans; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving sulfur dioxide redesignation requests submitted by the State of Ohio on March 20, 2000, for Coshocton, Gallia, and Lorain Counties. This request was first submitted on October 26, 1995. Ohio subsequently provided supplemental material to EPA in a letter dated September 14, 1999. On March 20, 2000, Ohio submitted final requests to redesignate Coshocton, Gallia, and Lorain Counties to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2).

EPA is also approving the maintenance plans for Coshocton, Gallia, and Lorain Counties. The plans are intended to ensure maintenance of the NAAQS for at least 10 years, and were submitted with the redesignation requests.

In conjunction with these actions, EPA is approving state-adopted emission limits for the following facilities: in Coshocton County: Columbus and Southern Ohio Electric—Conesville Plant; in Gallia County: Ohio Valley Electric Company—Kyger Creek Plant and Ohio Power—Gavin Plant; and in Lorain County: CEI—Avon Lake Plant, Ohio Edison—Edgewater Plant, U.S. Steel—Lorain Plant, and B.F. Goodrich Company—Lorain County Plant.

EPA is also approving other minor revisions in the state's rules for these three Counties.

On November 23, 1999, EPA received one comment on the proposal to redesignate Coshocton, Gallia, and Lorain Counties. American Electric Power (AEP) encouraged EPA to take final action to approve the redesignation.

DATES: This rule is effective on July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean EPA.

This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking this action?
3. What is the background for this action?
II. How Does the Proposed Submittal Compare to the Final Submittal?
III. Public Comments and EPA Response What comments did EPA receive?
IV. Background on Ohio Submittal
1. What information did Ohio submit, and what were its requests?
2. What guidance documents did EPA use in this rulemaking to evaluate Ohio's request?
V. State Implementation Plan (SIP)
1. How do state-adopted emission limits compare to the FIP limits?
2. What are the sources and emission limits that will be affected by EPA's action?
VI. Maintenance Plan
1. How does the maintenance plan apply in Coshocton, Gallia, and Lorain Counties?
2. What are the maintenance plan reduction requirements?
VII. Redesignation Evaluation
1. What five criteria did EPA use to review the redesignation requests?
2. Are these five criteria satisfied for Coshocton, Gallia, and Lorain Counties?
VIII. Final Rulemaking Action
IX. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility
F. Unfunded Mandates
G. Submission To Congress and The Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving SO_2 redesignation requests submitted by the State of Ohio for Coshocton, Gallia, and

Lorain Counties. EPA is also approving the maintenance plans for these counties. In addition, EPA is approving state-adopted emission limits for sources in these three counties. EPA plans separate action on rules 3745–18–03, 3745–18–04, 3745–18–15, and 3745–18–71, that Ohio submitted along with rule revisions for these three counties.

2. Why Is EPA Taking This Action?

EPA is taking this action because the redesignation requests meet the five criteria all redesignation requests must meet. The limits in the submittal are approvable because they are at least as stringent as the current set of federally enforceable limits. Coshocton, Gallia, and Lorain Counties have been designated as nonattainment areas for sulfur dioxide but now meet the sulfur dioxide NAAQS. The three counties have plans for keeping their sulfur dioxide levels within the health and welfare-based standards for the next 10 years and beyond. The plans require the three counties to consider impacts of future activities on air quality and to manage those activities.

3. What Is the Background for This Action?

EPA promulgated the applicable Federal Implementation Plan (FIP) in 1976. The FIP required significant emission reductions at specific facilities throughout the state to attain and maintain the NAAQS for SO_2.

On October 5, 1978, Coshocton, Gallia, and Lorain Counties (among others) were designated as nonattainment areas for the primary sulfur dioxide standards. The state adopted its own regulations in 1979, generally imposing limits similar to those promulgated in the FIP. The state submitted these regulations for EPA approval in 1980, including regulations for Coshocton, Gallia, and Lorain Counties.

The state then withdrew its submittal for selected sources. These sources are:

1. Coshocton County
   —Columbus and Southern Ohio Electric—Conesville plant
2. Gallia County
   —Ohio Valley Electric Company—Kyger Creek plant
   —Ohio Power—Gavin plant
3. Lorain County
   —Cleveland Electric Illuminating (CEI)—Avon Lake plant
   —Ohio Edison—Edgewater plant
   —U.S. Steel—Lorain plant
   —B.F. Goodrich Company

EPA approved this SIP regulation on January 27, 1981, for Coshocton, Gallia, and Lorain Counties (46 FR 8481) except for the source limits withdrawn by the state. The federally promulgated FIP regulations, therefore, have remained in effect for the above sources.

On October 26, 1995, Governor George Voinovich requested that EPA redesignate to attainment all remaining SO_2 nonattainment areas within the State of Ohio, including Coshocton, Gallia, and Lorain Counties.

On May 28, 1996, EPA Administrator Browner sent a letter to Governor Voinovich informing him that the redesignation request depended on EPA approval of state-adopted rules, such that the plan for assuring attainment would rely on approved State Rules rather than federally promulgated rules.

On September 14, 1999, Ohio provided supplemental supporting material for redesignation requests for three SO_2 nonattainment areas (Coshocton, Gallia, and Lorain Counties) to EPA.

On October 28, 1999 (64 FR 58018), EPA proposed approval of the redesignation requests for Coshocton, Gallia, and Lorain Counties, the maintenance plans, and the state-adopted emission limits.

The public comment period on this proposed approval ended on November 29, 1999; and only one comment, which was favorable, was received.

II. How Does the Proposed Submittal Compare to the Final Submittal?

For Gallia County emission limits, both the proposed and the final submittals are identical.

For the Coshocton County emission limits, paragraph (B)(4) of the final submittal, applying to two diesels at Columbus Southern Power Company, Conesville, was deleted based on evidence from the company's title V application that these units no longer operate. The final submittal indicates only 3 units (B006, B009, and B010) are in operation, instead of 5 units indicated in the proposed submittal.

For the Lorain County emission limits, paragraph (C) of the final submittal, applying to the General Motors Corporation, Fisher Body Division, was removed because this facility has been shutdown for 15 years. For the Avon Lake Plant, the state had two options in 3745–18–53, (B)(1) and (B)(2) or (B)(3) and (B)(4), for setting the facility's boilers' emission limits. Since the source only implements the strategy inherent in (B)(1) and (2), the limits in (B)(3) and (B)(4) had become irrelevant and were removed from the final state rule.

III. Public Comments and EPA Response

What Comments Did EPA Receive?

On November 23, 1999, EPA received one letter commenting on the proposed rulemaking. This letter, from AEP, encouraged EPA to take final action to approve the request as proposed. EPA received no adverse comments on this proposed rulemaking, and for the reasons provided in the proposal, concludes that the adopted emission limits, maintenance plans, and redesignation request for these counties should be approved.

IV. Background on Ohio Submittal

1. What Information Did Ohio Submit, and What Were Its Requests?

In June 1999, Ohio e-mailed copies of proposed rule revisions for Coshocton, Gallia, and Lorain Counties to EPA. On September 14, 1999, Ohio submitted additional material requested by EPA to support the state's requests to redesignate these Counties to attainment with respect to SO_2. On March 20, 2000, Ohio submitted final rule revisions with its final request for redesignation of these Counties to attainment for SO_2. In addition, the state requested approval for the SO_2 maintenance plans for Coshocton, Gallia, and Lorain Counties.

2. What Guidance Documents Did EPA Use in This Rulemaking To Evaluate Ohio's Requests?

Guidance for review of these requests includes a September 28, 1994, memorandum from the Director, Air Quality Management Division, Office of Air Quality Planning and Standards, EPA, to the Director, Air and Radiation Division, Region 5, entitled, ''Response to Request for Guidance on Issues with Ohio Sulfur Dioxide Federal Implementation Plan.''

This memorandum sets forth three criteria to be met for the approval of state limits that are equivalent to existing FIP limits without new modeling. Under the first two criteria, there must be no known inadequacy in the original attainment demonstration. Under the third criterion, the state limits must reflect no relaxation of existing emission limits.

All three of these criteria are met by the state-promulgated SIP limits. Therefore, the revised limits, as adopted and submitted on March 20, 2000, are adequate to assure attainment without further modeling.

Another guidance document relevant to this rulemaking is an April 21, 1983, memorandum entitled ''Section 107 Designation Policy Summary,'' from the

Director of EPA's Office of Air Quality Planning and Standards, which requires eight consecutive quarters of data showing SO_2 NAAQS attainment before an area can be redesignated. A county violates the NAAQS when its SO_2 level exceeds the NAAQS more than once in any year. Coshocton, Gallia, and Lorain Counties have eight consecutive quarters of data showing SO_2 NAAQS attainment. As discussed below, modeling-based evidence also indicates attainment of the SO_2 NAAQS.

Finally, a September 4, 1992 EPA policy memorandum on ''Procedures for Processing Requests to Redesignate Areas to Attainment'' was also relevant to this rulemaking. This memorandum explains that additional dispersion modeling is not required in support of an SO_2 redesignation request if an adequate modeled attainment demonstration was previously submitted and approved as part of the implemented SIP, and no indication of an existing air quality deficiency exists. These conditions are met here.

V. State Implementation Plan (SIP)

1. How Do State-Adopted Emission Limits Compare to the FIP Limits?

For facilities that are currently subject to FIP limits, the final state-adopted emission limits are equivalent to the FIP limits. A few emission points at these facilities have State limits but no FIP limits; approval of these State limits obviously increase the stringency of the SIP.

In Gallia County, for facilities currently subject to FIP limits, the State rules impose the same limits on the same set of emission points as the FIP. In Lorain County, the state's rules include limits for soaking pit process operations and seamless rotary furnace for USS/KOBE. In Coshocton County, the State's rules include limits for diesels and auxiliary boiler for Columbus Southern Power Company. Because these emission points are not currently subject to federally enforceable limits, these limits enhance the stringency of the State's plan.

The FIP limits at issue will become suspended upon approval of these submitted SIP limits, but would become applicable again if for any reason these SIP limits were rescinded in the future.

2. What Are the Sources and Emission Limits That Will Be Affected by EPA's Action?

The principal sources affected by this rulemaking are sources for which FIP limits are being superseded by limits in approved state rules. The table below lists these sources.

County names	State rules	Source names
Coshocton County	—OAC 3745–18–22 (B)	—Columbus and Southern Ohio Electric—Conesville.
Gallia County	—OAC 3745–18–33 (B)	—Ohio Valley Electric Company—Kyger Creek.
	—OAC 3745–18–33 (D)	—Ohio Power—Gavin.
Lorain County	—OAC 3745–18–53 (B)	—CEI—Avon Lake.
	—OAC 3745–18–53 (D)	—Ohio Edison—Edgewater Plant.
	—OAC 3745–18–53 (E)	—U.S. Steel
	—OAC 3745–18–53 (G)	—B.F. Goodrich.

This rulemaking also approves the removal of obsolete State limits that the State adopted in its final rulemaking.

VI. Maintenance Plan

1. How Does the Maintenance Plan Apply in Coshocton, Gallia, Lorain Counties?

Ohio's attainment plan for sulfur dioxide provides for attainment even with major sources emitting their maximum allowable emissions. Therefore, maintenance is provided by assuring that minor source impacts do not increase significantly. The principal minor sources are distant point sources and diesel vehicles.

2. What Are the Maintenance Plan Reduction Requirements?

Clean Air Act Title IV reductions and the required national conversion to low sulfur diesel fuel are the identified maintenance plan provisions for Coshocton, Gallia, and Lorain Counties.

VII. Redesignation Evaluation

1. What Five Criteria Did EPA Use To Review the Redesignation Requests?

Section 107(d)(3)(E) of the Clean Air Act (Act), as amended in 1990, establishes requirements to be met before an area may be redesignated from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act. An area can be redesignated to attainment if the following five conditions are met:

(A) The area has attained the applicable NAAQS.

(B) The area has a fully approved SIP under section 110(k) of the Act.

(C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.

(D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.

(E) The state has met all requirements applicable to the area under section 110 and part D of the Act.

2. Are These Five Criteria Satisfied for Coshocton, Gallia, and Lorain Counties?

A. Demonstrated Attainment of the NAAQS

Relevant Agency guidance is provided in both the April 21, 1983, and September 4, 1992 guidance documents cited above. The April 21, 1983 memorandum explains that eight consecutive quarters of data showing SO_2 NAAQS attainment are required for redesignation. The September 4, 1992 guidance explains that the area must have no more than one exceedance per year.

Ohio's September 14, 1999 submittal provides ambient monitoring data showing that Coshocton, Gallia, and Lorain Counties have met the NAAQS for the years 1994–1999.

Dispersion modeling is commonly used to demonstrate attainment of the SO_2 NAAQS. A modeling analysis was done in 1976 to show that, under all allowed operating scenarios, the emission limits in these three counties' SO_2 SIPs would lead to attainment and maintenance of the SO_2 standards. According to the September 4, 1992 memorandum, no further dispersion modeling is needed for the counties' redesignation. Ohio has provided evidence that sources in these counties are complying with these limits.

Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout these areas currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply.

EPA's guidance for implementing section 110 of the Act is discussed in

the General Preamble to Title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). The SO_2 SIP for Coshocton, Gallia, and Lorain Counties met the requirements of section 110 of the Act, and EPA approved the SIP on January 27, 1981, except that EPA did not take action for a limited set of sources.

State limits for the remaining set of specific sources in Coshocton, Gallia, and Lorain Counties are being approved in this rulemaking. For convenience, EPA is rulemaking on rules for entire affected Counties, and is approving additional minor revisions in these Counties.

C. Permanent and Enforceable Reductions in Emissions

Coshocton, Gallia, and Lorain Counties attained the SO_2 standards by implementing the SO_2 SIP controls. The reductions in emissions primarily come from converting some fuel-burning sources to lower sulfur content fuels, and to shutting down various types of sources. The use of lower-sulfur ''cleaner'' fuels is ensured by the facilities' air emission permits and federally enforceable SIP regulations.

D. Fully Approved Maintenance Plan

EPA has concluded that the combination of limitations on maximum allowable emissions from major point sources and implementation of programs that will yield reductions in minor source emissions will assure maintenance of the standards. EPA is approving the maintenance plan in today's action.

E. Part D and Other Section 110 Requirements

With today's approval of limits submitted on March 20, 2000, along with the approval of limits and attainment demonstrations published on January 27, 1981 (46 FR 8481), Ohio has met the relevant requirements.

VIII. Final Rulemaking Action

In summary, EPA is approving state-adopted emission limits for 7 sources in Coshocton, Gallia, and Lorain Counties, as well as approving minor revisions for other sources in these Counties. EPA is also approving the SO_2 maintenance plan for Coshocton, Gallia, and Lorain Counties as adequately ensuring that attainment will be maintained. Finally, EPA is approving redesignation requests from the State of Ohio which were submitted on October 26, 1995, September 14, 1999 and on March 20, 2000.

IX. Administrative Requirements

A. Executive Order 12866

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

B. 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 Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

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

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

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 August 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: May 5, 2000.

Norman Niedergang,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations are 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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(121) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(121) On March 20, 2000, the Ohio Environmental Protection Agency submitted rules to control sulfur dioxide emissions in Coshocton, Gallia and Lorain Counties.

(i) Incorporation by reference. Rules OAC 3745–18–22; OAC 3745–18–33; and OAC 3745–18–53. Adopted March 1, 2000; effective March 21, 2000.

3. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) and by adding paragraph (a)(14) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Approval-EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Painesville Municipal Plant boiler number 5), Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County, Lucas County (except Gulf Oil Company,

Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper, Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action-EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical-South Point), Lucas County (Gulf Oil Company, Coulton Chemical Company, Phillips Chemical Company and Sun Oil Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

(14) On March 20, 2000, the Ohio Environmental Protection Agency submitted maintenance plans for Coshocton, Gallia and Lorain Counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.336 entitled ''Ohio—SO_2'' is amended to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Athens County				X
Clermont County				X
Columbiana County				X
Coshocton County				X
Cuyahoga County:				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Heights, Strongsville, North Royalton, Broadview Heights, Brecksville and the Townships of Olmsted and Riveredge				X
The remainder of Cuyahoga County	X			
Gallia County				X
Greene County				X
Hamilton County				X
Jefferson County:				
The Cities of Steubenville and Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells				X
The remainder of Jefferson County				X
Lake County:				
The Cities of Eastlake, Timberlake, Lakeline, Willoughby (north of U.S. 20) and Mentor (north of U.S. 20, west of S.R. 306)				X
The remainder of Lake County				X
Lorain County				X
Lucas County:				
The area east of Route 23 and west of the eastern boundary of Oregon Township	X			
The remainder of Lucas County				X
Mahoning County				X
Montgomery County				X
Morgan County:				
Center Township				X
The remainder of Morgan County				X
Summit County:				
Area bounded by the following lines—north—Interstate 76, east—Route 93, south—Vanderhoof Road, west—Summit County line	(1)	(1)	(1)	(1)
Area bounded by the following lines— north—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, east—Summit/Portage county line, south—Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to county line, west—Summit/Medina county line				[2]X
Entire area northwest of the following line: Route 80 east to Route 91, Route 91 north to the county line				[2]X
The remainder of Summit County				[3]X
Trumbull County				[3]X

OHIO—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Washington County:				
Waterford Township				X
The remainder of Washington County				X
All other counties in the State of Ohio				X

[1] This area remains undesignated at this time as a result of a court remand in *PPG Industries, Inc.* v. *Costle,* 630 F.2d 462 (6th Cir. 1980).
[2] This area was affected by the Sixth Circuit Court remand but has since been designated.
[3] This area was not affected by the court remand in *PPG Industries, Inc.* v. *Costle* 630 F.2d 462 (6th Cir. 1980).

* * * * *

[FR Doc. 00–13199 Filed 6–2–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

42 CFR Parts 1001, 1003, 1005 and 1006

RIN 0991–AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From Public Law 104–191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule; correction amendments.

SUMMARY: This document contains several corrections to the final regulations which were published in the **Federal Register** on Wednesday, April 26, 2000 (65 FR 24400). These regulations revised the OIG's civil money penalty (CMP) authorities in conjunction with new or revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, and codified a number of technical corrections to the regulations governing the OIG's sanction authorities. Inadvertent errors appeared in the text of the regulations concerning the knowledge standard in § 1003.102 (a)(6), and in § 1005.7 with respect to discovery. In addition, an incorrect cross-reference was cited in the definition for the term ''preventive care,'' as set forth in part 1003. As a result, we are making corrections to 42 CFR 1003.101, 1003.102(a) and 1005.7 to assure the technical correctness of these regulations.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION: The HHS Office of Inspector General (OIG) issued final regulations on April 26, 2000 (65 FR 24400) that revised the OIG's CMP authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191. Among other provisions, this final rulemaking codified new CMPs for excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. The rule also codified a number of technical corrections to the regulations governing OIG's sanction authorities. In that final rule, several inadvertent errors appeared in the regulations text and are now being corrected.

CMP Knowledge Standard—§ 1003.102(a)(6)

In the preamble discussion regarding revisions to § 1003.102(a)(6), addressing the submission of claims for services that are medically unnecessary, we indicated that this paragraph was being amended to include the ''knows or should know'' standard found in the statute and in the revision to § 1003.102(a)(1) to ensure that it is not the OIG's intent to subject providers to penalties for legitimate disagreements over the medical necessity of items and services or for honest mistakes or errors (65 FR 24403). As indicated in that discussion, while the knowledge standard in the statute requires that providers assume responsibility for appropriate billing of their services, the OIG intends to impose CMPs only after establishing that a provider knew that a billed item or service was not medically necessary, or that he or she deliberately ignored or recklessly disregarded such information. Accordingly, we indicated that we were revising § 1003.102(a)(6) by adding the words ''knows or should know'' to have the paragraph read as: ''An item or service that a person knows or should know is medically unnecessary, and which is part of a pattern of such claims.'' (emphasis added). This language was inadvertently omitted from the revised regulations text. In order to be consistent with the preamble discussion, we are correcting the omission that occurred in § 1003.102(a)(6).

Discovery—§ 1005.7

In summarizing the provisions of the final rule, we indicated that we were amending § 1005.7 to provide for motions to compel discovery once a request for production of documents has been received. The preamble stated that any objections to a request for the production of documents will have to be filed with the opposing party within 15 days of receiving the discovery request, and that the party seeking the production of documents may then file a motion to compel discovery within 15 days, unless a lengthier time frame is set by the administrative law judge (ALJ) (65 FR 24412–13). This discretion afforded to the ALJ to grant an extension was inadvertently omitted from the regulations text in § 1005.7(e). We are correcting this omission by redesignating existing paragraph (e)(3) in this section to read as (e)(4) and by adding a new paragraph (e)(3) to address the ALJ's discretion in extending the appropriate time frames

Preventive Care—§ 1003.101

In the definition for ''preventive care'' appearing in § 1003.101, the definition incorrectly cites § 1003.102(b)(13) as the applicable cross-reference. We are amending this definition to cite the correct cross-reference, which is to the term ''remuneration'' that is set forth in this same section.

Amendatory Language to § 1003.103(a) Introductory Text and § 1003.105(a)(1)(i)

We are amending the language in the introductory text for § 1003.103(a) and

in paragraph (a)(1)(i) for § 1003.105 to make the references consistent with the those provisions added in earlier final rulemaking published on April 7, 2000 (65 FR 18434), which addressed OIG CMP authority for unbundling hospital outpatient services.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

Accordingly, 42 CFR parts 1003 and 1005 are corrected by making the following correcting amendments:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

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

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320a–7e,1320b–10, 1395u(j), 1395u(k), 1395cc(g), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.101 is amended by republishing the introductory text, and by revising the introductory paragraph for the definition of the term Preventive care to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Preventive care, for purposes of the definition of the term Remuneration as set forth in this section and the preventive care exception to section 231(h) of HIPAA, means any service that—

* * * * *

3. Section 1003.102 is amended by republishing the introductory text of paragraph (a) and by revising paragraph (a)(6) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has knowingly presented, or caused to be presented, a claim which is for—

* * * * *

(6) An item or service that a person knows or should know is medically unnecessary, and which is part of a pattern of such claims.

* * * * *

4. Section 1003.103 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) through (k) of this section, the OIG may impose a penalty of not more than—

* * * * *

5. Section 1003.105 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1003.105 Exclusion from participation in Medicare, Medicaid and all Federal health care programs.

(a)(1) * * *

(i) Is subject to a penalty or assessment under § 1003.102(a), (b)(1), (b)(4), (b)(12), (b)(13) or (b)(15); or

* * * * *

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.7 is amended by redesignating existing paragraph (e)(3) as (e)(4) and by adding a new paragraph (e)(3) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e) * * *

(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

Dated: May 26, 2000.

Michael Carelton,

Deputy Director for Information Resource Management.

[FR Doc. 00–13994 Filed 6–2–00; 8:45 am]

BILLING CODE 4152–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7320]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1-percent-annual-chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim 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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 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.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima	Unincorporated Areas.	January 20, 2000, January 27, 2000, *The Arizona Daily Star*.	The Honorable Sharon Bronson, Chairperson, Pima County Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701.	November 2, 1999	060344
California: Orange	City of Anaheim	January 6, 2000, January 13, 2000, *Anaheim Bulletin*.	The Honorable Tom Daly, Mayor, City of Anaheim, P.O. Box 3222, Anaheim, California 92803.	December 22, 1999	060213
Colorado:					
Arapahoe	Unincorporated Areas.	February 3, 2000, February 10, 2000, *The Villager*.	The Honorable Steve Ward, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0060.	January 6, 2000	080011
Larimer	City of Fort Collins.	January 26, 2000, February 2, 2000, *The Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	December 22, 1999	080102
El Paso	City of Colorado Springs.	January 4, 2000, January 11, 2000, *Gazette Telegraph*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901–1575.	December 14, 1999	080060
Jefferson	Unincorporated Areas.	January 19, 2000, January 26, 2000, *Columbine Community Charter*.	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, Colorado 80419.	December 22, 1999	080087
Larimer	Unincorporated Areas.	January 26, 2000, February 2, 2000, *The Coloradoan*.	The Honorable Cheryl Olson, Chairperson, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	December 22, 1999	080101
Hawaii: Hawaii	Hawaii	February 2, 2000, February 9, 2000, *West Hawaii Today*.	The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Room 202, Hilo, Hawaii 96720–4252.	January 6, 2000	155166
Missouri:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Butler	Unincorporated Areas.	January 24, 2000, January 31, 2000, *Daily American Republic*.	The Honorable Joe Humphrey, Commissioner, Butler County, Butler County Courthouse, Room 203, Poplar Bluff, Missouri 63901.	January 27, 2000	290044
St. Louis	City of Chesterfield.	January 11, 2000, January 18, 2000, *St. Louis Countian*.	The Honorable Nancy Greenwood, Mayor, City of Chesterfield, 16052 Swingley Ridge Road, Suite 100, Chesterfield, Missouri 63017.	April 17, 2000	290896
Butler	City of Poplar Bluff.	January 24, 2000, January 31, 2000, *Daily American Republic*.	The Honorable Reid Forrester, Mayor, City of Poplar Bluff, City Hall, 101 Oak Street, Poplar Bluff, Missouri 63901.	December 27, 1999	290047
Pemiscot	City of Steele	February 3, 2000, February 10, 2000, *The Steele Enterprise*.	The Honorable Keith Samford, Mayor, City of Steele, 115 South Walnut Street, Steele, Missouri 63877.	December 20, 1999	290279
St. Louis	City of Wildwood	January 11, 2000, January 18, 2000, *St. Louis Countian*.	The Honorable R. W. Marcantano, Mayor, City of Wildwood, 16962 Manchester Road, Wildwood, Missouri 63040.	April 17, 2000	290922
New Mexico:					
Sandoval	Town of Bernalillo	January 24, 2000, January 31, 2000, *Albuquerque Journal*.	The Honorable Charles Aguilar, Mayor, Town of Bernalillo, P.O. Box 638, Bernalillo, New Mexico 87004.	December 14, 1999	350056
Sandoval	City of Rio Rancho.	January 24, 2000, January 31, 2000, *Albquerque Journal*.	The Honorable John Jennings, Mayor, City of Rio Rancho, P.O. Box 15550, Rio Rancho, New Mexico 87174.	December 14, 1999	350146
Sandoval	Unincorporated Areas.	January 24, 2000, January 31, 2000, *Albuquerque Journal*.	Ms. Debbie Hays, County, Manager, Sandoval County, P.O. Box 40, Bernalillo, New Mexico 87004.	December 14, 1999	350055
Texas:					
Dallas	City of Dallas	December 28, 1999, January 4, 2000, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla Street, Dallas, Texas 75201.	December 2, 1999	480171
Dallas	City of Dallas	January 5, 2000, January 12, 2000, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	December 15, 1999	480171
Dallas	City of Dallas	January 17, 2000, January 24, 2000, *Dallas Morning News*.	The Honorable Ron Kirk, Mayor, City of Dallas, City Hall, 1500 Marilla, Dallas, Texas 75201.	December 20, 1999	480171
Tarrant	City of Euless	January 24, 2000, January 31, 2000, *Fort Worth Star-Telegram*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, Texas 76039.	December 22, 1999	480593
Tarrant	City of Fort Worth	January 24, 2000, January 31, 2000, *Fort Worth Star-Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102.	December 22, 1999	480596
Harris	Unincorporated Areas.	December 28, 1999, January 4, 2000, *Houston Chronicle*.	The Honorable Robert Eckels, Harris County Judge, Harris County, 1001 Preston Street, Suite 911, Houston, Texas 77002.	December 15, 1999	480287
Harris	Unincorporated Areas.	December 28, 1999, January 4, 2000, *Houston Chronicle*.	The Honorabale Robert Eckels, Harris County Judge, 1001 Preston Street, Suite 911, Houston, Texas 77002.	April 3, 2000	480287
Bexar	Town of Hollywood Park.	January 5, 2000, January 12, 2000, *San Antonio Express-News*.	The Honorable Gary Mercer, Mayor, Town of Hollywood Park, Two Mecca Drive, Hollywood Park, Texas 78232.	April 11, 2000	480040
Midland	City of Midland	January 4, 2000, January 11, 2000, *Midland Reporter-Telegram*.	The Honorable Robert Burns, Mayor, City of Midland, P.O. Box 1152, Midland, Texas 79702–1152.	December 7, 1999	480477
Bexar	City of San Antonio.	February 4, 2000, February 11, 2000, *San Antonio Express-News*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78282–3966.	May 11, 2000	480045

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Bexar	City of San Antonio.	January 5, 2000, January 12, 2000, *San Antonio Express-News*.	The Honorable Howard W. Peak, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	April 11, 2000	480045
Bexar	City of Shavano Park.	January 5, 2000, January 12, 2000, *San Antonio Express-news*.	The Honorable Tommy Peyton, Mayor, City of Shavano Park, 99 Saddletree Road, San Antonio, Texas 78231.	April 11, 2000	480047

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

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13999 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–p

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 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.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Arkansas	
Perry County and Incorporated Areas (FEMA Docket No. 7302)	
Cypress Creek:	
Approximately 4,200 feet downstream of Highway 9	*294
Approximately 2,000 feet upstream of Johnson Road ...	*294
Haydou Branch:	
At confluence with Cypress Creek	*294
Approximately 2,200 feet upstream of Adelle Road	*357

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps are available for inspection at the County Courthouse, Main Street and Highway 60, Perryville, Arkansas.	
Maps are available for inspection at Town Hall, 104 South Johnson Street, Perry, Arkansas.	
Kansas	
Leavenworth County (Unincorporated Areas) (FEMA Docket No. 7302)	
Tonganoxie Creek:	
Approximately 4,500 feet downstream of Washington Street	*834
Approximately 3,800 feet downstream of Washington Street	*835
Approximately 1,700 feet upstream of 218th Street	*863
Unnamed Tributary #3:	
Approximately 1,925 feet from its confluence with Tonganoxie Creek	*863
Approximately 4,450 feet upstream from its confluence with Tonganoxie Creek	*872
Maps are available for inspection at the Leavenworth County Courthouse, 300 Walnut, Leavenworth, Kansas.	
Tonganoxie (city), Leavenworth County (FEMA Docket No. 7302)	
Tonganoxie Creek:	
Approximately 4,500 feet downstream of Fourth Street	*843
Approximately 3,300 feet downstream of Fourth Street	*843
Approximately 100 feet upstream of 218th Street	*862
Unnamed Tributary #3:	
At its confluence with Tonganoxie Creek	*862
Approximately 1,925 feet upstream of its confluence with Tonganoxie Creek	*863
Maps are available for inspection at City Hall, 321 S. Delaware, Tonganoxie, Kansas.	
Wyoming	
Green river (town), Sweetwater County (FEMA Docket No. 7302)	
Bitter Creek:	
Located at the confluence of Bitter Creek with Green River	*6,075
Located approximately 2,160 feet upstream of the confluence of Bitter Creek with Green River	*6,086
Green River:	
Approximately 3,200 feet downstream of the Teton Boulevard Bridge	*6,068
Located approximately 6,800 feet upstream of the Union Pacific Railroad Bridge	*6,090
Maps are available for inspection at the Community Development Department, 50 E. Second North Street, Green River, Wyoming.	

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

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13998 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1001; MM Docket No. 99–214; RM–9546 and RM–9699]

Radio Broadcasting Services; Camp Wood and Rocksprings, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C3 for Channel 256A at Camp Wood, Texas, and modifies the construction permit for Station KAYG to specify operation on Channel 251C3, in response to a petition filed by La Radio Cristiana Network, Inc. *See* 64 FR 31532, June 11, 1999. The coordinates for Channel 251C3 at Camp Wood are 29–42–53 and 100–00–56. Mexican concurrence has been received for the allotment at Camp Wood. In response to a counterproposal filed by Frank Mccoy, we will allot Channel 295C2 at Rocksprings, Texas, at coordinates 30–02–44 and 10–19–00. There is a site restriction 10.8 kilometers west of the community. Mexican concurrence has been requested for the allotment at Rocksprings but notification has not yet been received. Therefore, operation with the facilities specified for Rocksprings herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA–Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this docketed proceeding is terminated.

DATES: Effective June 26, 2000.

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. 99–214, adopted April 19, 2000, and release May 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, 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.

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 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Campwood, Channel 256A and adding Camp Wood, Channel 251C3 and by adding Rocksprings, Channel 295C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–13702 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1112; MM Docket No. 94–70; RM–8474 and RM–8706]

Radio Broadcasting Services; Moncks Corner, Kiawah Island, and Sampit, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This Memorandum Opinion and Order partially grants two petitions for reconsideration of a *Report and Order,* 61 FR 42228 (August 14, 1996), and overturns that *Report and Order.*

The document admits new evidence presented by Sampit Broadcasters (''SB'') and L.M. Communications II of South Carolina, Inc. (''LMC'') that demonstrates the availability of a transmitter site for LMC and that Sampit, South Carolina is a ''community'' for allotment purposes. Since both rulemaking proponents were found to be qualified to effectuate their mutually exclusive proposals, the proposals were compared to determine the winner. LMC's proposal to substitute Channel 288C2 for Channel 287C3 at Moncks Corner, South Carolina, reallot Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and modify Station WNST(FM)'s license accordingly was preferred over SB's proposal to allot Channel 289A to Sampit, South Carolina. The new coordinates for LMC's transmitter site at Kiawah Island are: 32–38–57 NL and 80–02–11 WL.

DATES: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 94–70, adopted May 10, 2000, and released May 19, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th 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, and 336.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Moncks Corner, Channel 287C3 and adding Kiawah Island, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–13701 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 108
Monday, June 5, 2000

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV00–928–1 PR]

Papayas Grown in Hawaii; Reopening of Comment Period on Removal of Suspension Regarding Grade, Inspection, and Related Reporting Requirements and Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed removal of the suspension of grade, inspection, and related reporting requirements for Hawaiian papayas is reopened.

DATES: Comments must be received by June 20, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on February 14, 2000, and published in the **Federal Register** (65 FR 8313; February 18, 2000). The proposed rule invited comments on removing the suspension of grade, inspection, inspection waiver procedure, and related exempt shipment reporting requirements under the marketing order regulating papayas grown in Hawaii. The proposal specified that papayas shipped to any destination had to be at least Hawaii No. 1, except that the weight requirements specified in this grade shall not apply. These requirements were the same as previously applied except that the 5 percent tolerance for immature papayas was proposed to be removed. The comment period ended April 18, 2000.

One comment signed by eight persons was received. In evaluating that comment, the Department further reviewed the Papaya Administrative Committee's (Committee) recommendation to remove the 5 percent tolerance for immature fruit under Hawaii No. 1. The rationale provided by the Committee for removing that tolerance was to improve the quality of papayas shipped into the fresh market. A further review of the requirements under Hawaii No. 1, however, revealed that the removal of that tolerance could have the effect of permitting more immature fruit in shipments of Hawaii papayas than was permitted before the requirements were suspended in 1994. For instance, under the inspection shipping point plan in Table IIA of the Standards for Hawaii Grown Papaya, the removal of the 5 percent tolerance could permit a lot of papayas to include a maximum of 7 percent immature papayas. This would not be an improvement in quality as contemplated by the Committee.

Before proceeding further on this recommendation, the Department needs more information to clarify the basis of the recommendation to remove the 5 percent tolerance. Reopening the comment period to June 20, 2000, would allow the Committee and other interested persons more time to review the proposed rule and submit information to clarify the matter.

This delay should not substantially add to the time required to complete this rulemaking action. Accordingly, the period in which to file written comments is reopened until June 20, 2000. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: May 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–13979 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–98–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that would have required a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by removing all references to Change No. 01 of the referenced service bulletin. The actions specified by this new proposed AD are intended to prevent failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and

consequent reduced controllability of the airplane.

DATES: Comments must be received by June 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 99–NM–98–AD'' in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–98–AD.''

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 7, 1999 (64 FR 24545). That NPRM would have required a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. That condition, if not corrected, could result in failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA recognized that it inadvertently specified EMBRAER Service Bulletin 145–32–0031, Change No. 01, dated December 8, 1998, as an appropriate source of service information for accomplishing the requirements of the NPRM and for determining the affected airplanes. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, only classified Change No. 02 of EMBRAER Service Bulletin 145–32–0031, dated February 12, 1999, as mandatory. Change No. 02 of the service bulletin differs from Change No. 01 in that it incorporates additional affected actuator part numbers and serial numbers. Therefore, the FAA has removed all references to Change No. 01 of the subject service bulletin from the proposed AD.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 33 EMBRAER Model EMB–145 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,980, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–98–AD.

Applicability: Model EMB–145 series airplanes, equipped with main landing gear maneuvering actuators, part and serial numbers as listed in EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the maneuvering actuator piston rod of the main landing gear (MLG), which would impede retraction of the MLG and consequent reduced controllability of the airplane; accomplish the following:

Ultrasonic Inspection and Replacement, If Necessary

(a) Within the next 100 landings after the effective date of this AD, perform an ultrasonic inspection of the maneuvering actuator piston rods of the MLG to ensure adequate wall thickness of the piston rods, in accordance with EMBRAER Service Bulletin 145–32–0031, Change No. 02, dated February 12, 1999.

(1) If the thickness of any measurement point in any piston rod is greater than 2.0 mm (.079 inch), no further action is required by this AD.

(2) If the thickness of any measurement point in any piston rod is from 1.5 mm (.059 inch) to 2.0 mm (.079 inch): Within 500 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

(3) If the thickness of any measurement point in any piston rod is less than 1.5 mm (.059 inch): Within 50 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

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, Atlanta 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, Atlanta ACO.

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–09–01 R1, dated March 15, 1999.

Issued in Renton, Washington on May 17, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–14019 Filed 6–2–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7322]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1-percent-annual-chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW, Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed 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.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Benton County and Incorporated Areas.	Osage/Turtle Creek	Just upstream of North 12th Street	None	*1,325
			Approximately 400 feet upstream of North 6th Street.	None	*1,340
		Blossom Way Creek	At its confluence with Osage/Turtle Creek	None	*1,205
			At its intersection with South 26th Street	None	*1,276
		Osage Tributary 1 (Horsebarn Tributary).	At its intersection with Stoney Brook Road.	None	*1,204
			Approximately 700 feet upstream of Horsebarn Road.	None	*1,252
		Superior Tributary to Osage/Turtle Creek.	At its confluence with Osage/Turtle Creek	None	*1,284
			Approximately 1,300 feet upstream of Dixieland Road.	None	*1,314
		Tributary 1 of Blossom Way Creek.	At its confluence with Blossom Way Creek.	None	*1,288
			Approximately 3,300 feet upstream of its confluence Tributary 2 of Blossom Way Creek.	None	*1,325
		Tributary 2 to Blossom Way Creek.	At its confluence with Tributary 1 of Blossom Way Creek.	None	*1,299
			Approximately 4,300 feet upstream of Honeysuckle Road.	None	*1,332
		Tributary 3 to Blossom Way Creek.	At its confluence with Blossom Way Creek.	None	*1,257
			Approximately 1,900 feet upstream from its confluence with Blossom Way Creek.	None	*1,268
Maps are available for inspection at 215 East Central, Suite 8, Room 302, Bentonville, Arkansas.					
Send comments to the Honorable Cary Anderson, Benton County Judge, 215 East Central, Suite 9, Bentonville, Arkansas 72712.					
Maps are available for inspection at 207 South Second, Rogers, Arkansas.					
Send comments to the Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar, Rogers, Arkansas 72756.					
Maps are available for inspection at 214 North Lincoln Street, Lowell, Arkansas.					
Send comments to the Honorable Martha Brown, Mayor, City of Lowell, P.O. Box 129, Lowell, Arkansas 72745.					
Maps are available for inspection at 315 Southwest A Street, Bentonville, Arkansas.					
Send comments to the Honorable Terry Coberly, Mayor, City of Bentonville, 117 West Central, Bentonville, Arkansas 72712.					
	Crawford County and Incorporated Areas.	Tributary 1	At its confluence with Little Frog Bayou	None	*413
			Approximately 350 feet upstream of East Cherry Street.	None	*431
		Tributary 2	At its confluence with Tributary 1	None	*418
			Approximately 275 feet upstream of East Cherry Street.	None	*429

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Tributary 4	At its confluence with Little Frog Bayou Tributary.	None	*444
		Tributary A	Approximately 1,200 feet upstream of its confluence with Little Frog Bayou Tributary.	None	*469
			Approximately 650 feet downstream of the Union Pacific Railroad.	None	*411
		Lighthouse Drain	Just upstream of Arkansas Highway 64	None	*434
			At its confluence with Tributary A	None	*414
			Approximately 100 feet upstream of Lighthouse Drive.	None	*439
		Little Frog Bayou Tributary	At its confluence with Little Frog Bayou	*423	*426
			Just upstream of Maple Shade Road	None	*508
Maps are available for inspection at 300 Main Street, Room 4, Van Buren, Arkansas.					
Send comments to the Honorable Jerry Williams, Crawford County Judge, 300 Main Street, Room 4, Van Buren, Arkansas 72956.					
Maps are available for inspection at 804 Fayetteville Avenue, Suite B, Alma, Arkansas 72921. Send comments to the Honorable Kevin Beaumont, Mayor, City of Alma, 804 Fayetteville Avenue, Suite A, Alma, Arkansas 72921.					
	Russellville (City) Pope County.	Whig Creek	At its intersection with the Union Pacific Railroad.	*385	*393
			Just upstream of Arkansas Highway 64	None	*416
		Whig Creek Tributary No. 1.	At its confluence with Whig Creek	None	*323
			Approximately 500 feet upstream of Arkansas Highway 75.	None	*326
		Whig Creek Tributary No. 2.	At its confluence with Whig Creek	None	*323
			Approximately 2,500 feet upstream of the Dardanelle and Russellville Railroad.	None	*323
		Prairie Creek	At its confluence with Prairie Creek Tributary No. 2.	None	*374
			Approximately 250 feet upstream of Weir Road.	None	*393
		Prairie Creek Tributary No. 2.	At its confluence with Prairie Creek	*374	*374
			At its intersection with Weir Road (Arkansas Highway 326).	*384	*382
			Approximately 2,000 feet upstream of Weir Road.	None	*394
		School Drain	At its confluence with Prairie Creek	None	*343
			Approximately 2,000 feet upstream of University Drive.	None	*387
Maps are available for inspection at 205 West Second Street, Russellville, Arkansas.					
Send comments to the Honorable Raye Turner, Mayor, City of Russellville, P.O. Box 428, Russellville, Arkansas 72811.					
	Washington County and Incorporated Areas.	Middle Fork White River	Approximately 12,000 feet upstream of mouth.	None	*1,193
			Approximately 3,700 feet upstream of its confluence with Koger Branch.	None	*1,209
		Stokenbury Creek	At its confluence with the White River	None	*1,199
			Just upstream of Stokenbury Road	None	*1,446
		Koger Branch	At its confluence with the Middle Fork White River.	None	*1,202
			Approximately 2,700 feet upstream of South Harris Drive.	None	*1,220
		Faubus Creek	At its confluence with the White River	None	*1,211
			Approximately 4,300 feet upstream of South Center Street.	None	*1,255

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at 130 West First Street, Elkins, Arkansas.					
Send comments to the Honorable Oscar Lisle, Mayor, City of Elkins, P.O. Box 331, Elkins, Arkansas 72727.					
Maps are available for inspection at 4 South College Avenue, Suite 205, Fayetteville, Arkansas.					
Send comments to the Honorable Jerry Hunton, Washington County Judge, 280 North College Avenue, Suite 210, Fayetteville, Arkansas 72701.					
North Dakota	Benson County and Incorporated Areas.	Silver Lake	Entire shoreline of Silver Lake	None	*1,450
		Pelican Lake	South shoreline of Pelican Lake	None	*1,450
		Spring Lake	Spring Lake shoreline	None	*1,450
		Devils Lake	Northwest shoreline of Grahms Island	None	*1,450
			Devils Lake shoreline adjacent to Minnewaukan.	None	*1,451
			Area East of U.S. Route 281, south of intersection with State Route 19.	None	*1,453
			West Side Woods Rutten Causeway	None	*1,454
			West Side of State Route 57 Causeway south of the Narrows State Recreation Area.	None	*1,455
Maps are available for inspection at the County Courthouse/Tax Equalization Office, 311 B Avenue South, Minnewaukan, North Dakota.					
Send comments to the Honorable John Grann, Chairperson, Benson County Board of Commissioners, P.O. Box 123, Minnewaukan, North Dakota 58351.					
Maps are available for inspection at the City Office, 130 Main Street East, Minnewaukan, North Dakota 58351.					
Send comments to the Honorable Mike Every, Mayor, City of Minnewaukan, P.O. Box 56, Minnewaukan, North Dakota 58351.					
Maps are available for inspection at the Floodplain Emergency Management—Bureau of Indian Affairs Realty Office, Highway 57, Fort Totten, North Dakota.					
Send comments to the Honorable Phillip Lonzie, Sr., Tribal Chairperson, P.O. Box 359, Fort Totten, North Dakota 58335.					
	Nelson County (Unincorporated Areas).	Stump Lake	Entire shoreline of Stump Lake	None	*1,450
Maps are available for inspection at Nelson County Sheriff's Office, 210 W. B Avenue, Lakota, North Dakota.					
Send comments to the Honorable Lawrence E. Jahnke, Presiding Judge, 210 W. B Avenue, Lakota, North Dakota 58344.					
	Ramsey County and Incorporated Areas.	Lake Irvine	Entire shoreline of Lake Irvine	None	*1,450
		Lake Alice	Entire shoreline of Lake Alice	None	*1,450
		Chain Lake	Entire shoreline of Chain Lake	None	*1,450
		Mikes Lake	Entire shoreline of Mikes Lake	None	*1,450
		Dry Lake	Entire shoreline of Dry Lake	None	*1,450
		Stone Lake	Entire shoreline of Stone Lake	None	*1,450
		Pelican Lake	North shoreline of Pelican Lake	None	*1,450
		Sixmile Bay	Northernmost point of Sixmile Bay	None	*1,450
			West shore of Sixmile Bay	None	*1,450
			East shore Sixmile Bay tow miles south of State Route 19.	None	*1,451
		Creel Bay	Entire western shore of Creel Bay	None	*1,450
			Bay side of levee, east shoreline of Creel Bay, one mile North of Lakewood Park.	None	*1,452
			Bay side of levee located at southwest side of Devils Lake Municipal airport.	None	*1,455
		Devils Lake	Approximately 7,000 feet west of 8th Avenue South.	None	*1,451
			Approximately 7,000 feet east of 8th Avenue South.	None	*1,452
			West side State Route 57 causeway south of the Narrows State Recreational Area.	None	*1,455
		East Devils Lake	North Shoreline of East Devils Lake	None	*1,450

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Ramsey County Emergency Management, 425 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Arne Berg, County Commission Chairman, HE 1, Box 112, Starkweather, North Dakota 58377.					
Maps are available for inspection at the Post Office c/o Bill Bartle, 304 Orvis Avenue, Church's Ferry, North Dakota.					
Send comments to the Honorable Bill Bartle, Mayor, City of Church's Ferry, P.O. Box 156, Church's Ferry, North Dakota 58325.					
Maps are available for inspection at Ramsey County Emergency Management, 425 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Raymond Kaeding, Chairman, Township of Coulee, HCR 1, Box 27, Penn, North Dakota 58362.					
Maps are available for inspection at Ramsey County Tax Equalization Office, 524 4th Avenue, Devils Lake, North Dakota.					
Send comments to the Honorable Evan Heutis, Chairman, Township of Creel, Route 5, Box 259, Devils Lake, North Dakota 58301–0259.					
Maps are available for inspection at the City Offices, 423 6th Street, Devils Lake, North Dakota.					
Send comments to the Honorable Fred Bolt, Mayor, City of Devils Lake, P.O. Box 1048, Devils Lake, North Dakota 58301.					
	Towner County (Unincorporated Areas).	Mauvais Coulee River	Section 8 of Township 157N and Range 66W (Panel 650A).	None	*1,450
			Section 36 of Township 157N and Range 66W (Panel 800A).	None	*1,450
Maps are available for inspection at Sheriff's Office, 315 2nd Street, Cando, North Dakota.					
Send comments to the Honorable Darwin Daerwald, Chairman, Board of Commissioners, Box 179, Cando, North Dakota 58324.					
Washington	Okanogan County (Unincorporated Areas).	Twisp River	Approximately 2.18 miles above mouth ...	*1,677	*1,677
			Approximately 2.23 miles above mouth ...	None	*1,679
			At its intersection with the Poorman Creek Cutoff Road Bridge.	None	*1,830
Maps are available for inspection at Okanogan County Planning and Development, 237 Fourth Avenue, Okanogan, Washington.					
Send comments to the Honorable Ed Thiele, Chairman of the Board of Commissioners, P.O. Box 791, Okanogan, Washington 98840.					

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

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13997 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7318]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1-percent-annual-chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW, Washington, DC 20472; (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed 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.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[Amended]

1. The authority citation for Part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Alaska	Matanuska-Susitna Borough.	Talkeetna River Overflow	Just west of Talkeetna Spur Highway	None	*341
			At East Bank of Talkeetna River	None	*351
Maps are available for inspection at the Code Compliance Department, 350 East Dahlia Avenue, Palmer, Alaska.					
Send comments to The Honorable Darcie Salmon, Mayor, Matanuska-Susitna Borough, 350 East Dahlia Avenue, Palmer, Alaska 99645.					
Colorado	Durango (City) La Plata County.	Animas River	Approximately 0.67 mile downstream of U.S. Highway 155/160.	None	*6,375
			Approximately 3.56 miles upstream of 32nd Street.	None	*6,551
		Dry Gulch	Approximately 1,500 feet upstream of confluence with Junction Creek.	*6,626	*6,628
			Approximately 5,670 feet upstream of Borrego Drive.	None	*6,873
		Lightner Creek	At confluence with Animas River	None	*6,485
			Approximately 1,800 feet upstream of confluence with Animas River.	None	*6,513
Maps are available for inspection at the Planning Department, 1235 Camino Del Rio, Durango, Colorado.					
Send comments to The Honorable Joe Colgan, Mayor, City of Durango, 949 East 2nd Avenue, Durango, Colorado 81301.					
Texas	Dallas County and Incorporated Areas.	Trinity River	Approximately 2,500 feet downstream of Dowdy Ferry Road.	*394	*394
			At Loop 12	*402	*403
			At confluence of West Fork and Elm Fork Trinity River.	*423	*423
		West Fork Trinity River	At confluence with Elm Fork Trinity River	*423	*423
			Just downstream of Belt Line Road	*439	*440
			Approximately 11,000 feet upstream of State Route 360.	*464	*465
		Elm Fork Trinity River	At confluence with West Fork Trinity River.	*424	*423
			Just downstream of Valley View Lane	*436	*435
			Approximately 13,000 feet upstream of the confluence of Indian Creek.	*454	*454
		Tenmile Creek	Just upstream of abandoned Watermill Road.	*440	*440
			Approximately 300 feet downstream of Interstate Highway 35.	*529	*529
			At Westmoreland Road	*583	*584
			Approximately 300 feet downstream of Cockrell Hill Road.	*599	*599
		Long Branch of Muddy Creek.	Approximately 1,200 feet upstream of Gulf, Colorado, and Santa Fe Railroad.	*520	*520

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,200 feet downstream of Dewitt Road.	*530	*530
		Indian Creek	Approximately 800 feet downstream of Paige Road.	None	*532
			Approximately 2,300 feet upstream of Paige Road.	None	*542
		Cottonwood Creek of Grand Prairie.	At confluence with Mountain Creek/Mountain Creek Lake.	*458	*458
			Approximately 2,000 feet downstream of SE 14th Street (Fish Creek Road).	*458	*459
			Approximately 150 feet downstream of SE 8th Street.	*458	*470
		Bear Creek	Approximately 2,850 feet downstream of County Road.	None	*521

Maps are available for inspection at City Hall, 105 Cockrell Road, Ovilla, Texas.

Send comments to The Honorable Cindy Jones, Mayor, 105 S. Cockrell Road, Ovilla, Texas 75154.

Maps are available for inspection at the County Administration Building, 411 Elm, 4th Floor, Dallas, Texas.

Send comments to The Honorable Lee Jackson, Judge, Dallas County, 411 Elm Street, Dallas, Texas 75202.

Maps are available for inspection at City Hall, Public Works Department, 1945 East Jackson, Carrollton, Texas.

Send comments to The Honorable Milburn Gravely, Mayor, City of Carrollton, 1945 Jackson Road, Carrollton, Texas 75006.

Maps are available for inspection at City Hall, Engineering Department, 255 Parkway Boulevard, Coppell, Texas.

Send comments to The Honorable Jim Witt, City Manager, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.

Maps are available for inspection at Oak Cliff Municipal Center, Floodplain Management and Erosion Control, 320 East Jefferson, Room 321, Dallas (Oak Cliff), Texas 75201.

Send comments to The Honorable Ron Kirk, Mayor, City of Dallas, 1500 Marilla, Dallas, Texas 75201.

Maps are available for inspection at City Hall, Development Services, 211 East Pleasant run Road, De Soto, Texas.

Send comments to The Honorable Richard Rozier, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, Texas 75115.

Maps are available for inspection at City Hall, Public Works, 203 East Wheatland Road, Duncanville, Texas.

Send comments to The Honorable Glenn Repp, Mayor, City of Duncanville, 203 East Wheatland Road, Duncanville, Texas 75116.

Maps are available for inspection at City Hall, Engineering Department, 13000 William Dodson Parkway, Farmers Branch, Texas.

Send comments to The Honorable Richard Escalante, City Manager, City of Farmers Branch, P.O. Box 819010, Farmers Branch, Texas 75381.

Maps are available for inspection at the Engineering Department, 206 West Church, Grand Prairie, Texas.

Send comments to The Honorable Tom Hart, City Manager, City of Grand Prairie, 206 West Church Street, Grand Prairie, Texas 75053–0011.

	Denton County and Incorporated Areas.	Denton Creek (Below Grapevine Lake).	At confluence with Elm Fork of Trinity River.	*446	*445
			Approximately 6,400 feet Upstream of confluence with Elm Fork of Trinity River.	*446	*445
			Approximately 26,000 feet Upstream of confluence with Elm Fork of Trinity River.	*455	*455
		Dudley Branch	Approximately 50 feet upstream from confluence with Elm Fork of Trinity River.	*451	*451
			Approximately 425 feet upstream of the Missouri-Kansas-Texas Railroad.	*451	*452
			Approximately 750 feet downstream from Eisenhower Street.	*452	*453
			At Eisenhower Street	*457	*457
		Elm Fork of Trinity River West Split Flow Area.	At confluence with Elm Fork of Trinity River.	*454	*453
			At divergence from Elm Fork of Trinity River.	*459	*457
		Elm Fork of Trinity River (Below Lewisville Lake).	Approximately 1,050 feet downstream from confluence with Timber Creek.	*449	*449
			Approximately 300 feet downstream from Interstate 35.	*451	*450
			At State Route 121	*461	*462
			At Atchison, Topeka and Santa Fe Railway.	*463	*462
		Indian Creek (At Grapevine Lake).	At confluence with Elm Fork of Trinity River.	*453	*452

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 7,000 feet upstream of confluence with Elm Fork of Trinity River.	*453	*452
			Approximately 700 feet upstream of West Hebron Parkway.	*462	*462
		Lake Lewisville Spillway ...	At confluence with Elm Fork of Trinity River.	*461	*462
			Approximately 2,400 feet upstream of confluence with Elm Fork of Trinity River.	*461	*462
			Approximately 5,500 feet upstream of State Route 12.	*482	*482
		Timber Creek	At confluence with Elm Fork of Trinity River.	*450	*449
			Approximately 900 feet upstream of Pound Grove Road.	*454	*453
			Approximately 2,500 feet upstream of Interstate Route 35E.	*463	*463
Maps are available for inspection at the Planning Department, 306 North Loop 288, Denton, Texas.					
Send comments to the Honorable Jeff Moseley, Denton County Judge, 110 West Hickory, Denton, Texas 76201.					
Maps are available for inspection at the Engineering Department, 1197 West Main, 2nd Floor, Lewisville, Texas.					
Send comments to the Honorable Claude King, City Manager, City of Lewisville, 1197 West Main @ Civic Center, Lewisville, Texas 75029–9002					
Washington	Castle Rock (City) Cowlitz County.	Cowlitz River	Approximately 14,500 feet downstream of State Highway 10.	*39	*43
			Approximately 2,700 feet upstream of State Highway 10.	*49	*49
Maps are available for inspection at City Hall, 141 A Street, SW, Castle Rock, Washington.					
Send comments to the Honorable Barbara Larsen, Mayor, City of Castle Rock, P.O. Box 370, Castle Rock, Washington 98611.					
	Cowlitz County (unincorporated areas).	Cowlitz River	At confluence with Columbia River	*17	*18
			Approximately 3 miles upstream of the confluence of the Toutle River.	None	*62
		Toutle River	At confluence with Cowlitz River	*56	*58
			Immediately downstream of Burlington Northern Railroad.	*58	*58
		Arkansas Creek		*45	*48
			At confluence with Cowlitz River	*48	*48
		Ostrander Creek	Approximately 0.3 mile downstream of Delameter Road.	*25	*33
			Just downstream of Burlington Northern Railroad At Ostrander Road.	*33	*33
		Coweman River (Lower Reach near Kelso).	Approximately 1.5 miles upstream of confluence with Cowlitz River.	*17	*19
			Approximately 4.3 miles upstream of confluence with Cowlitz River.	*19	*19
Maps are available for inspection at the Planning Department, County Courthouse, 207 4th Avenue N., Kelso, Washington.					
Send comments to the Honorable Bill Lehning, Chairman of the Board of Commissioners, 207 4th Avenue North, Kelso, Washington 98626.					
	Kelso (City) Cowlitz County.	Cowlitz River	At confluence with Columbia River	*17	*18
			Approximately 4,500 feet upstream of Cowlitz Way.	*21	*27
		Coweman River	At confluence with Cowlitz River	*17	*19
			Approximately 1.6 miles upstream of Kelso Drive.	*18	*19
Maps are available for inspection at the Mayor and Council Office, 105 Allen Street, Kelso, Washington.					
Send comments to the Honorable Keith Lawrence, Mayor, City of Kelso, 105 Allen Street, Kelso, Washington 98626.					
	Longview (City) Cowlitz County.	Cowlitz River	At State Route 43Z	*17	*19
			Approximately 4,500 feet upstream of Cowlitz Way.	*21	*27

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Planning and Building Department, 1525 Broadway, Longview, Washington.					
Send comments to the Honorable Ramona Leber, Mayor, City of Longview, P.O. Box 128, Longview, Washington 98632.					
Wyoming	Sheridan (City) Sheridan County.	Big Goose Creek	Approximately 1.66 miles upstream of Works Street.	*3,768	*3,768
			Approximately 4 miles upstream of Works Street.	None	*3,800
		Little Goose Creek	Approximately 1,250 feet downstream of Brundage Lane.	*3,782	*3,782
			Just upstream of County Road 66	None	*3,836
Maps are available for inspection at the City of Sheridan Planning Department, 55 East Grinnell Avenue, Sheridan, Wyoming.					
Send comments to the Honorable Jim Wilson, Mayor, City of Sheridan, 55 East Grinnel Avenue, Sheridan, Wyoming 82801.					

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

Dated: May 17, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–13996 Filed 6–2–00; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6096]

Marine Shipboard Electrical Cable Standards

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule: notice of public meeting and reopening of comment period.

SUMMARY: The Coast Guard is holding a public meeting and reopening the comment period to allow for additional comments on the notice of proposed rulemaking for Marine Shipboard Electrical Cable Standards. Since publication of the notice, we have received several requests to hold a public meeting.

DATES: The public meeting is scheduled for Wednesday, June 28, 2000, from 9 a.m. to 3 p.m. but will close early if all business is finished. Comments and related material must reach the Docket Management Facility on or before July 7, 2000.

ADDRESSES: The public meeting will be held in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility [USCG–2000–6096], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on the public meeting, call Dolores Mercier, Project Manager, Office of Design and Engineering Standards (G–MSE), Coast Guard, telephone 202–267–0658, fax 202–267–4816, e-mail *dmercier@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, phone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The notice of proposed rulemaking (NPRM), published on February 8, 2000 (65 FR 6111), encouraged interested persons to participate in this rulemaking by submitting written comments by May 8, 2000. The comment period for this rulemaking is reopened and will close July 7, 2000.

If you submit written comments, please include your name and address, and identify the docket number for this rulemaking [USCG–2000–6096] and the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. Please submit all comments and material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received whether submitted in writing to the docket or presented during the public meeting discussed below.

Public Meeting

We have received several requests for a public meeting and have scheduled one. The scope of the meeting is limited only to matters addressed in the NPRM. Comments concerning adoption of IEEE Standard 45 (1998) will not be included as part of this meeting. A request for comments concerning adoption of IEEE Standard 45 (1998) is scheduled for publication this summer.

We encourage your further participation by attending the meeting or by submitting comments and related material on the NPRM.

Information on Services for Individuals With Disabilities

For information on facilities or services for people with disabilities or to request special assistance at the meeting, contact Dolores Mercier, Office of Design and Engineering Standards

(G–MSE), Coast Guard, telephone 202–267–0658, e-mail *dmercier@comdt.uscg.mil,* as soon as possible.

Dated: May 31, 2000.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–14112 Filed 6–1–00; 1:02 pm]

BILLING CODE 4910–15–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102 and WT Docket No. 00–80; DA 00–1098]

Wireless E911; Call Back Number Issues Associated With Non-Service Initialized Wireless 911 Calls

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, in this document, seeks comment on a request for further consideration of call back number issues associated with non-service initialized wireless 911 calls. The action is needed to establish a strong, inclusive record on these issues that the Commission may use in making well-informed decisions in this critical enhanced 911 proceeding.

DATES: Submit comments on or before June 19, 2000; submit reply comments on or before July 5, 2000.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whaley, 202–418–1310.

SUPPLEMENTARY INFORMATION:

1. On April 28, 2000, the Texas 911 Agencies,[1] the National Emergency Number Association (NENA), the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Association of State Nine-One-One Administrators (NASNA) (collectively, the Public Safety Entities) filed a letter with the Federal Communications Commission (Commission) seeking further consideration of call back number issues associated with non-service initialized 911 calls.

2. Phase I Enhanced 911 rules require that a dialable number accompany each 911 call to enable Public Safety Answering Points (''PSAPs'') dispatchers to either call back if the call is disconnected or obtain additional information. (47 CFR 20.18((d)). In its E911 First Report and Order (61 FR 40348, August 2, 1996) the Commission recognized that it would not always be possible for carriers to provide reliable call back numbers for all wireless 911 calls. Thus, the Commission exempted covered carriers from providing reliable call back numbers to PSAPs in cases where the wireless telephone is not associated with a dialable telephone number, such as those designed or offered on an originate-only rate plan or those never initialized with an underlying carrier service.

3. The Public Safety Entities note that, increasingly, refurbished wireless telephones are being distributed by many organizations. While not challenging the benefits of these donations, the Public Safety Entities note that these distributed telephones and other 911-only non-serviced initialized telephones, may not provide valid call back emergency information even when used in areas where 911 Phase I services have been implemented. The Public Safety Entities assert that increased sales and use of these wireless telephones create a public safety concern that should be further considered. Accordingly, the Public Safety Entities request that the Commission seek additional comment concerning call back capabilities for non-serviced initialized handsets and address whether further Commission action, such as technical solutions or educational programs, is needed or appropriate.

Procedural Matters

4. Pursuant to § 1.45 of the Commission's Rules, 47 CFR 1.45, interested parties may file comments on the proposed implementation deadline no later than June 19, 2000. Replies shall be filed no later than July 19, 2000. All comments shall reference the docket number of this proceeding. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the docket number of this proceeding. Parties filing electronically should also e-mail a copy of their comments to jwhaley@fcc.gov. Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary (Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554) and a diskette copy to the Commission's copy contractor (International Transcription Service, Inc. (ITS), CY–B400, (202) 857–3800).

5. Pursuant to § 1.1206 of the Commission's Rules, 47 CFR 1.1206, this proceeding is a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–14032 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

[1] The Texas 911 Agencies are comprised of the Texas Commission of State Emergency Communications (a state agency) and the following local Texas Emergency Communications Districts: Tarrant County 911 District, Bexar Metro 911 Network, Brazos County Emergency Communication District, DENCO Area 911 District, 911 Network of East Texas, Galveston County Emergency Communication District, Greater Harris County 911 Emergency Network, Henderson County 911 Communication District, Howard County 911 Communication District, Kerr Emergency 911 Network, Lubbock County Emergency Communication District, McLennan County Emergency Assistance District, Midland Emergency Communication District, Montgomery County Emergency Communication District, Potter-Randall County Emergency Communication District, and Texas Eastern 911 Network.

Notices

Federal Register
Vol. 65, No. 108
Monday, June 5, 2000

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

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Tennessee

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in Section IV of the FOTG of the NRCS in Tennessee for review and comment.

SUMMARY: It is the intention of NRCS in Tennessee to issue conservation practice standards, Closure of Waste Impoundments (Code 360), Grade Stabilization Structure (Code 410), Manure Transfer (Code 634), Nutrient Management (Code 590), Pond (Code 378), Trough or Tank (Code 614), Waste Storage Facility (Code 313), Waste Treatment Lagoon (Code 359), Waste Utilization (Code 633), for inclusion in Section IV of the FIELD OFFICE TECHNICAL GUIDE (FOTG).

DATES: Comments will be received until July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee, 37203. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetlands provisions of the law shall be made available for Public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made.

Dated: May 26, 2000.

Donald L. Dotson,

Acting State Conservationist, Natural Resources Conservation Service, Nashville, Tennessee.

[FR Doc. 00–13902 Filed 6–2–00; 8:45 am]

BILLING CODE 3410–16–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: June 13, 2000; 9:00 a.m.

PLACE: RFE/RL, Inc., Room 546, Vinohradska 1, 110 00 Prague 1, Prague, Czech Republic.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: June 1, 2000.

John A. Lindburg,

Legal Counsel.

[FR Doc. 00–14151 Filed 6–1–00; 2:05 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: U.S. Government Trade Event Information Request.

Agency Form Number: ITA–4136P.

OMB Number: 0625–xxxx.

Type of Request: Regular Submission.

Burden: 50 hours.

Number of Respondents: 50.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center is under the umbrella of the Trade Promotion Coordinating Committee (TPCC), which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate U. S. Government (USG) advocacy among the TPCC. The purpose of the questionnaire is to collect the necessary information to make an evaluation as to whether a firm qualifies for senior-level USG support, in the form of attendance at an event including witnessing a commercial agreement signing. The event could be a company sponsored activity or a foreign or USG sponsored event to highlight a commercial trade success for more than one firm. Without this information we will be unable to determine if a U.S. firm is eligible for USG support for the firm's role in the event.

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

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room

6086, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Email LEngelme@doc.gov.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: May 30, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–13973 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–2000]

Foreign-Trade Zone 146—Lawrence County, IL; Application for Expansion of Manufacturing Authority—Subzone 146A, North American Lighting, Inc., Facilities, Flora and Salem, IL (Automotive Lighting Products)

A application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, grantee of FTZ 146, requesting an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures and requesting authority to expand the boundary of FTZ Subzone 146A at the North American Lighting, Inc. (NAL), facilities in Flora and Salem, Illinois. It was formally filed on May 30, 2000.

Subzone 146A was approved by the Board in 1988 with authority granted for the manufacture of automotive lighting components and other related auto parts at NAL's manufacturing facilities (355,000 sq.ft./14 acres) in Flora, Illinois *(Site 1)* (Board Order 371, 53 FR 5436, 2–24–88). The subzone was subsequently reorganized and expanded to include NAL's second manufacturing facility (380,000 sq.ft./22 acres) in the Salem Industrial Park, Salem, Illinois *(Site 2)* (Board Order 718, 60 FR 2375, 1–9–95), with the scope of FTZ manufacturing authority increased to 28 million units annually.

The applicant is now requesting authority to expand the subzone boundaries to include an additional 300,000 square feet of manufacturing space within Site 1 and an additional 17-acre parcel and 365,000 square feet manufacturing/warehouse space within Site 2. Under the current expansion plan, the NAL facilities' capacity will be approximately doubled (to 56 million units per year) with the addition of 665,000 square feet of production area. Activity at the facilities (2,200 employees) involves design, injection molding, plating and assembly of motor vehicle headlamps, rear combination lamps, high mount stop lamps, turn signals, dome and trunk lamps, fog lamps, side marker and license plate lamps using domestic and foreign-origin components. Foreign-sourced components and materials (about 19 percent of total purchases) include: various polymers and resins in primary form (HTSUS Ch. 39), articles of rubber and plastic, parts of lighting equipment, wiring harnesses, bulbs, gaskets/seals, fasteners, optical elements of glass, certain electrical apparatus, lamps and lenses, optical fiber and cable/bundles (duty rates: free–12.5%, 1.2¢/kg+7.5%).

FTZ procedures exempt NAL from Customs duty payments on the foreign components used in export production (9% of shipments). On its domestic sales, the company is able to choose the duty rates that apply to finished automotive lighting equipment and parts (duty free, 2.5%) for the foreign components noted above. The auto duty rate (2.5%) applies if the finished products are shipped via zone-to-zone transfer to U.S. motor vehicle assembly plants with subzone status. The request indicates that the savings from FTZ procedures will continue to help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 2000).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: May 30, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14031 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2000]

Foreign-Trade Zone 183—Austin, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Central Texas, Inc., grantee of FTZ 183, requesting authority to expand FTZ 183–Site 3 (High Tech Corridor site) in Austin, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 26, 2000.

FTZ 183 was approved on December 23, 1991 (Board Order 550, 57 FR 42, 1/2/92), expanded twice in 1998 (Board Order 964, 63 FR 12837, 3/23/98; Board Order 994, 63 FR 39071, 7/21/98), and expanded in 1999 (Board Order 1035, 64 FR 19978, 4/23/99). The zone currently consists of eight sites in the Austin, Texas, area: *Site 1* (317 acres, 7 parcels)—Austin Enterprise site, within the Austin Enterprise Zone Area along Highway 290 and the Ben White Boulevard-Montopolis Drive area, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (1,336 acres, 11 parcels) High Tech Corridor site located along I–35, 14 miles north of downtown Austin (site straddles Austin-Round Rock City line); *Site 4* (122 acres) Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (246 acres, 2 parcels) Round Rock ''SSC'' site located along I–35 between Chandler Road and Westinghouse Road on the northern edge of the City of Round Rock; *Site 6* (246 acres) Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres) San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; and, *Site 8* (200 acres) MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the new Austin Bergstrom International Airport.

The applicant is now requesting authority to expand Site 3 to include two additional parcels (276 acres), located to the west of the existing site. The area consists of the tech.ridge

corporate center and the Wells Branch Industrial Park. This proposed change will increase the FTZ area at Site 3 to 1,612 acres. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 1700 Congress, Second Floor, Austin, TX 78701.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Room 4008, Washington DC 20230.

Dated: May 26, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–14030 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Reviews of Antidumping Duty Orders on Canned Pineapple Fruit From Thailand and Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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 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: Kathryn B. McCormick, or James Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1930, or 482–3330, 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 duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–549–813	731–TA–706	Thailand	Canned Pineapple Fruit.
A–821–807	731–TA–807	Russia	Ferrovanadium and Nitrided Vanadium.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping duty (''AD'') order will be revoked unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping, and (2) material injury to the domestic industry.

The reviews will be conducted pursuant to sections 751(c) and 752 of the Act. 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'') and in 19 CFR part 351 (1999) in general. 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 reviews 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 (2000). 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 (2000)) wishing to participate in the sunset reviews 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 orders 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 (2000) for definitions of terms and for other general information concerning antidumping duty order 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: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14023 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[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) (2000), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822, A–583–820]

Helical Spring Lock Washers From the People's Republic of China and Taiwan; Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Helical Spring Lock Washers From the People's Republic of China and Taiwan.

SUMMARY: On November 2, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC'') and Taiwan (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999) in general. 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*'').

Background

On November 2, 1999, the Department initiated sunset reviews of the antidumping orders on HSLWs from the PRC and Taiwan (64 FR 59160), pursuant to section 751(c) of the Act. On the basis of a notice to participate and adequate substantive response filed on behalf of a domestic interested party in each review, and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

Scope

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope remains dispositive.

There has been one scope ruling with respect to HSLWs from the PRC and Taiwan. On November 21, 1997, the Department ruled that HSLWs imported into the United States in an uncut, coil form are within the scope of the order.[1]

Analysis of Substantive Responses

All issues raised in the case and rebuttal briefs by parties to these sunset reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on HSLWs from the PRC and Taiwan would be likely to lead to continuation or

[1] *See Notice of Scope Rulings,* 62 FR 62288 (November 21, 1997)

recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/Exporter	Margin (percent)
PRC:	
Hangzhou Spring Washer Plant (''HSWP'')	69.88
HSWP via IFI Morgan Limited	69.88
HSWP via Carway Development Ltd.	69.88
HSWP via Midway Fasteners Ltd.	69.88
HSWP via Linkwell Industry Co., Ltd.	69.88
HSWP via Fastwell Industry Co., Ltd.	69.88
HSWP via Sunfast International Corp.	69.88
HSWP via Winner Standard Parts Co., Ltd.	69.88
All Others	128.63
Taiwan:	
Spring Lake Enterprises	31.93
Ceimiko Industrial	31.93
Par Excellence Industrial	31.93
All Others	31.93

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14022 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, or Annika O'Hara, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778, 482–3464, or 482–3798, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR part 351 (1998).

Scope of Order

The product covered by this order is certain non-frozen apple juice concentrate (''NFAJC''). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Amended Final Determination

In accordance with section 735(a) of the Act, on April 13, 2000, the Department published its final determination of the antidumping duty investigation of certain NFAJC from the People's Republic of China (''PRC'') in which we determined that U.S. sales of NFAJC from the PRC were made at less than normal value (65 FR 19873 (ldquo;*NFAJC Final*'')). On April 18, 2000, we received ministerial error allegations, timely filed pursuant to § 351.224(c)(2) of the Department's regulations from Yantai North Andre Juice Co., Ltd. (''North Andre''); Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. (''Haisheng''); Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside''); Shandong Zhonglu Co., Ltd./Rushan Shangjin-Zhonglu Foodstuff Co., Ltd./Shandong Luling Fruit Juice Co./Rushan Dongjin Foodstuffs (''Zhonglu''); Yantai Oriental Juice Co., Ltd. (''Oriental''); Qingdao Nannan Foods Co., Ltd. (''Nannan''); Xian Asia Qin Fruit Co., Ltd. (''Asia''); Xian Yang Fuan Juice Co., Ltd. (''Fuan''); Changsha Industrial Products & Minerals Import and Export Co., Ltd. (''Changsha Industrial''); and Shangdong Foodstuffs Import and Export Corporation (''Shangdong Foodstuffs'') (hereinafter collectively referred to as ''the respondents'') regarding the Department's final margin calculations. On April 24, 2000, we received comments on the respondents' ministerial error allegations from Coloma Frozen Foods, Inc.; Green Valley Packers; Knouse Foods Cooperative, Inc.; Mason County Fruit Packers Co-op, Inc.; and Tree Top Inc. (hereinafter collectively referred to as ''the petitioners'').

We have determined in accordance with section 735(e) of the Act that a ministerial error in the calculation of the international freight surrogate value was made in our final margin calculations. For a detailed discussion of the above-cited ministerial error allegations and the Department's analysis, see Memorandum to Richard W. Moreland, dated May 8, 2000. We are amending the final determination of the antidumping duty investigation of NFAJC from the PRC to correct this ministerial error. The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
North Andre	0.00	0.00
Haisheng	12.90	12.03
Lakeside	28.54	27.57
Zhonglu	9.40	8.98
Oriental	9.96	9.96
Nannan	26.43	25.55
Asia	15.36	14.88
Yang	15.36	14.88
Changsha Industrial	15.36	14.88
Shandong Foodstuffs	15.36	14.88
PRC-wide rate	51.74	51.74

Antidumping Duty Order

On May 30, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 735(b)(1)(A) of

the Act, by reason of less-than-fair-value imports of NFAJC from the PRC.

Therefore, the Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all entries of NFAJC from the PRC, except for subject merchandise both produced and exported by North Andre, which received a zero final margin. The ITC further found that critical circumstances do not exist with respect to imports of the subject merchandise from the PRC. As a result, antidumping duties will be assessed on all unliquidated entries of NFAJC entered, or withdrawn from warehouse, for consumption on or after November 23, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 65675), and the Department will direct Customs to refund any cash deposits made, or bonds posted, on any subject merchandise which was entered prior to the Department's preliminary determination publication date of November 23, 1999. Finally, we will instruct Customs to liquidate without regard to antidumping duties and to refund all cash deposits, or bonds posted, for entries of subject merchandise both produced and exported by North Andre.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Revised Weighted-average margin percentage
North Andre	([1])
Haisheng	12.03
Lakeside	27.57
Zhonglu	8.98
Oriental	9.96
Nannan	25.55
Asia	14.88
Fuan	14.88
Changsha Industrial	14.88
Shandong Foodstuffs	14.88
PRC-wide rate	51.74

[1] Excluded.

This notice constitutes the antidumping duty order with respect to NFAJC from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14029 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from Brazil.

SUMMARY: On November 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on silicon metal from Brazil (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, waivers of response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). 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*'').

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from Brazil (64 FR 59160), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). The Department received a notice of intent to participate on behalf of American Silicon Technologies (''AST''), Elkem Metals Company (''Elkem''), and Globe Metallurgical Inc. (''Globe'') (collectively, ''domestic interested parties''), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On November 29, 1999, we received a waiver of response from respondent interested parties Companhia Brasileira Carbureto de Calcio, Camargo Correa Metais, S.A., Ligas de Aluminio S.A., Companhia Ferroligas Minas Gerais—Minasligas, and RIMA Industrial S.A., pursuant to 19 CFR 351.218(d)(2)(i). On December 2, 1999, we received a waiver of response from respondent interested party Eletrosilex Bela Horizonte.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from Brazil (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in a number of related appeals and remand proceedings. *Id.* at 3. Without a substantive response from respondent

interested parties the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from Brazil is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by this review is silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (''HTS'') as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from Brazil would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Companhia Brasileira Carbureto de Calcio (''CBCC'')	87.79
Camargo Correa Metais, S.A. (''CCM'')	93.20
All Others	91.06

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14026 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–804]

Silicon Metal From Argentina; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from Argentina.

SUMMARY: On November 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on silicon metal from Argentina (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). 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*'').

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from Argentina (64 FR 59160), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of American Silicon Technologies (''AST''), Elkem Metals Company (''Elkem''), and Globe Metallurgical Inc.

(''Globe'') (collectively, ''domestic interested parties''), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from Argentina (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in a number of related appeals and remand proceedings. *Id.* at 3. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from Argentina is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by sunset review is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal from Argentina containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (65 FR 5311, February 3, 2000). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (''HTS'') as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this review. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memo, which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import__admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from Argentina would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Electrometalurgica Andina, S.A.I.C. (''Andina'')	17.87
All Others	17.87

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are published in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14027 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews,* 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review of silicon metal from the People's Republic of China.

SUMMARY: On November 2, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC'') (64 FR 59160) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

ADDRESSES: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). 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*'').

Background

On November 2, 1999, the Department initiated a sunset review of the antidumping duty order on silicon metal from the PRC (64 FR 59160), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). The Department received a notice of intent to participate on behalf of American Silicon Technologies (''AST''), Elkem Metals Company (''Elkem''), and Globe Metallurgical Inc. (''Globe'') (collectively, ''domestic interested parties''), within the applicable deadline (November 15, 1999) specified in 19 CFR 351.218(d)(1)(i). Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On December 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under 19 CFR 351.218(d)(3)(i). Domestic interested parties claim that, in 1990, Elkem, Globe, and four other domestic producers filed the petition that resulted in the issuance of the antidumping duty order on silicon metal from the PRC (*see* December 1, 1999, Substantive Response of domestic interested parties at 2). Domestic interested parties also claim that at least one of them has actively participated in each of the administrative reviews conducted by the Department, as well as in the new shipper review rescinded on July 28, 1999. *Id.* at 3. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct an expedited, 120-day review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on February 29, 2000, the Department determined that the sunset review of silicon metal from the PRC is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than May 30, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by this review is silicon metal containing at least 96.00 percent, but less than 99.99 percent of silicon by weight. Also covered by this review is silicon metal containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight (58 FR 27542, May 10, 1993). Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (''HTS'') as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this order. Although the HTS numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on silicon metal from the PRC would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margin:

Manufacturer/exporters	Margin (percent)
All Chinese producers/exporters	139.49

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14028 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews,* 65 FR 11761 (March 6, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Hungary: Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recission of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is rescinding the June

1, 1998 through May 31, 1999 antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished, from Hungary.

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Elfi Blum at (202) 482–0197, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Scope of the Review

This antidumping review covers tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary. The merchandise under review is currently classified under subheadings 8482.20.00, 8482.91.00, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Recission of 1998–99 Antidumping Duty Administrative Review

On July 29, 1999, in response to a request by Daewoo-MGM Rt., the Department published a Notice of Initiation of Antidumping and Countervailing Administrative Reviews (64 FR 41075). Daewoo-MGM Rt. was the only party which requested a review. On March 20, 2000, Daewoo-MGM Rt. withdrew its request for review. We are therefore rescinding this review in its entirety in accordance with 19 U.S.C. 1675(a)(1) of the Act and § 351.213(d)(1) of our regulations.

The recission of this review does not affect the reclassification of the Republic of Hungary to market economy status for antidumping purposes (*see* Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa on *Market vs. Non-Market Economy Analysis of the Republic of Hungary*, dated February 23, 2000). This notice is published in accordance with 19 U.S.C. 1677(f) and § 351.213(d)(4) of our regulations.

Dated: May 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–14021 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Mobil Oil Exploration and Producing Southeast, Inc.; Consistency Appeal of Objections by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of decision.

On September 2, 1994, the Secretary of Commerce (Secretary) declined to override two objections by the State of North Carolina to the proposed drilling discharges (PDD) and overall Plan of Exploration (POE) by Mobil Oil Exploration & Producing Southeast, Inc. (Mobil) at a site about 38 miles offshore North Carolina. The Secretary made these decisions pursuant to section 307(c)(3) of the Coastal Zone Management Act (CZMA). Mobil challenged the Secretary's decisions in U.S. District Court for the District of Columbia claiming they were made in violation of the Administrative Procedure Act. On March 11, 1996, the court ordered a stay of the litigation and remanded the matter to the Secretary for a determination whether the administrative record should be reopened to receive two recently produced studies, one on the impacts of Mobil's propsoed actions on benthic resources and one on their impacts on socio-economic resources. *Mobil, et al.* v. *Brown, et al.,* 920 F. Supp. 1 (D.D.C. 1996).

The Secretary's decision was held in abeyance pending settlement discussions and the outcome of related litigation.

On December 8, 1999, the Secretary issued a decision declining to reopen the record to admit the two studies at issue in *Mobil* v. *Brown,* for two reasons. First, both this Department and parties to appeals under the CZMA have an interest in the finality of Secretarial decisions and the administrative process. Once the administrative record is closed, a decision should be made, and new materials should not be submitted or considered without a showing of good cause. No good cause was shown in this case. Second, the two studies do not address all of the information gaps identified by the Secretary's 1994 decisions. The Secretary's decision has been submitted to the District Court in response to the court's order in *Mobil* v. *Brown.* Copies of the decision may be obtained from:

Karl Gleaves, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 26, 2000.

James A. Dorskind,

General Counsel.

[FR Doc. 00–13971 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Request for Comments on Issues Related to Policies and Agenda for the National Intellectual Property Law Enforcement Coordination Council

AGENCIES: U.S. Department of Justice and U.S. Patent and Trademark Office, as Co-Chairs, National Intellectual Property Law Enforcement Coordination Council.

ACTION: Notice of request for public comments.

SUMMARY: The Members of the National Intellectual Property Law Enforcement Coordination Council (the Council) seek public comment on issues associated with the Council's mission. Interested members of the public are invited to present written comments on any of the topics outlined in the Supplementary Information section of this Notice.

DATES: All comments are due by June 20, 2000.

ADDRESSES: Persons wishing to offer written comments should address those comments to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, D.C. 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–8885, or by electronic mail through the Internet to elizabeth.shaw@uspto.gov. All comments will be maintained for public inspection in Room 902 , Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw by telephone at (703)

305–9300, by fax at (703) 305–8885, or by mail marked to her attention and addressed to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

1. Background

On September 29, 1999, President William J. Clinton signed into law the Treasury/Postal Appropriations Bill, Public Law No. 106–58, Section 653, which created the ''National Intellectual Property Law Enforcement Coordination Council'' (the Council). The Council's mission is ''to coordinate domestic and international intellectual property law enforcement among federal and foreign entities.'' The Council is required to ''report annually on its coordination activities'' to the President and to the Appropriations and Judiciary Committees of the House and Senate.

The statutorily designated Council Members, listed according to their order of mention in the statute, are: The Assistant Secretary of Commerce and Commissioner of Patents and Trademarks (Co-Chair) (under Public Law No. 106–113, the head of the United States Patent and Trademark Office is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office) (The Honorable Q. Todd Dickinson); the Assistant Attorney General, Criminal Division (Co-Chair) (The Honorable James K. Robinson); the Under Secretary of State for Economic, Business, and Agricultural Affairs (The Honorable Alan P. Larson); the Deputy United States Trade Representative (Ambassador Richard Fisher); the Commissioner of Customs (The Honorable Raymond W. Kelly); and the Under Secretary of Commerce for International Trade (Acting Under Secretary Robert S. LaRussa). In addition, the statute directs the Council to consult with the Register of Copyrights (The Honorable Marybeth Peters) on law enforcement matters relating to copyrights and related matters and rights.

The full Council and their staffs have met on several occasions to begin shaping the Council's agenda. This Request for Public Comment is intended to give intellectual property rights owners (and other interested parties) an opportunity to recommend steps in furtherance of the Council's mission.

2. Issues for Public Comment

Interested members of the public are invited to present written comments on issues relevant to the policy-related objectives listed below. This forum is not intended to serve as an opportunity for the public to air individual case-related complaints unless they are relevant to broader law enforcement policy issues.

The Council's Agenda

What, if any, domestic policy-level law enforcement issues should the Council address?

What, if any, international policy-level law enforcement issues should the Council address?

Council-Industry Cooperation

In what ways can the Council assist the intellectual property industries in creating domestic and international environments conducive to enforcement of intellectual property rights?

In what ways can the Council enhance the enforcement of intellectual property rights while facilitating legitimate trade?

Are there gaps or impediments in existing law enforcement regimes that, if remedied, would enable rights-holders to better protect their intellectual property rights?

In what ways can the intellectual property industries contribute to or assist the Council in carrying out its mission of coordinating domestic and international intellectual property law enforcement-related activities?

In what ways can the Council assist U.S. Government interaction with its foreign counterparts on intellectual property law enforcement-related activities?

3. Guidelines for Written Comments

Written comments should include the name, affiliation, and title of the individual providing the written comments; and, if applicable, an indication of whether the comments offered represent the views of the respondent's organization or are the respondent's personal views.

Parties offering written comments should also provide their comments in machine-readable (electronic) format. Such submissions may be provided via Internet electronic mail or on a 3.5″ floppy disk formatted for use in either a Macintosh or MS–DOS based computer. Machine-readable (electronic) submissions should be provided as unformatted text (*e.g.*, ASCII or plain text) or as formatted text in one of the following formats: Microsoft Word (Macintosh, DOS, or Windows versions); or WordPerfect (Macintosh, DOS, or Windows versions).

Information that is provided pursuant to this notice will be made part of a public record and may be made available via the Internet. Therefore, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who rely on confidential information to illustrate a point are requested to summarize, or otherwise submit the information in a way that will permit its public disclosure.

Dated: May 31, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

John C. Keeney,

Acting Assistant Attorney General for the Criminal Division, United States Department of Justice.

[FR Doc. 00–13975 Filed 6–2–00; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Notice; Meeting

AGENCY: Consumer Product Safety Commission.

TIME AND DATE: Wednesday, June 7, 2000, 2:00 p.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED: Oral Drugs Switched From Prescription to Over-the-Counter (OTC) Status

The staff will brief the Commission on the staff's recommendation to propose that child-resistant packaging requirements for oral prescription drugs continue when such drugs are granted over-the-counter (OTC) status by the Food and Drug Administration.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 31, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–14168 Filed 6–1–00; 2:35 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–39 with attached transmittal and policy justification.

Dated: May 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

24 MAY 2000
In reply refer to:
I-00/005458

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $48 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 00-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 42 million
Other	$ 6 million
TOTAL	$ 48 million

(iii) **Description of Articles or Services Offered: Two hundred seventy-nine M109A2/A3 155mm self-propelled howitzers, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (UTM)**

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(vii) **Date Report Delivered to Congress: 24 MAY 2000**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - 155mm Self-propelled Howitzers

The Government of Egypt has requested a possible sale of 279 M109A2/A3 155mm self-propelled howitzers, support equipment, spare and repair parts, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $48 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Egypt will use these howitzers to replace aging Soviet towed artillery and to compliment the modernization of the M1A1/M60A3 divisions. Egypt will have no difficulty absorbing these howitzers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

No contractor is involved for this purchase. Equipment is considered long supply and is no longer utilized by the U.S. Government. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contract representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–13893 Filed 6–2–00; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Proposed Collection; Comment Request Entitled Preaward Survey Forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408). This clearance currently expires September 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 4, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.,* capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

Respondents: 12,000.

Responses Per Respondent: .5.

Total Responses: 6,000.

Hours Per Response: 24.

Total Burden Hours: 144,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: May 31, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13969 Filed 6–2–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0002]

Proposed Collection; Comment Request Entitled Solicitation Mailing List Application (SF 129)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). This OMB clearance currently expires on September 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 4, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

Respondents: 200,000.
Responses Per Respondent: 4.
Total Responses: 800,000.
Hours Per Response: .58.
Total Burden Hours: 464,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: May 31, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13970 Filed 6–2–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Perform an Environmental Analysis for the Proposed Beddown of the Global Hawk Remote Operated Aircraft System

The United States Air Force will conduct an environmental analysis to determine the potential environmental impacts of bedding down the unmanned aerial vehicle, Global Hawk, at a main operating base (MOB). This proposal involves locating up to 60 high altitude endurance unmanned aerial vehicles, associated equipment and up to approximately 800 personnel at an Air Force base within the continental United States. The beddown will start with an initial cadre of four to six aircraft the first year, building to the total number with a delivery schedule of two to four aircraft per year. The proposal includes construction of support facilities and use of airspace in the local region. The Federal Aviation Administration has been invited to participate as a cooperating agency in this environmental analysis.

Five Air Force bases are being considered as potential beddown locations: (1) Edwards Air Force Base (AFB), California, (2) Beale AFB, California; (3) Tinker AFB, Oklahoma; (4) Ellsworth AFB, South Dakota; and (5) Wright-Patterson AFB, Ohio. In addition, the Air Force will analyze the no-action alternative, which considers potential environmental impacts should the Air Force decide not to beddown the Global Hawk System.

The Air Force will conduct a series of scoping meetings to solicit public input concerning the proposal. The scoping process will help identify issues to be addressed in the environmental analysis. In addition to the comments received at the scoping meetings, written comments on the scope of the environmental analysis will be accepted by the Air Force at the address below through June 30, 2000. The Air Force will accept appropriate comments at any time during the environmental analysis process.

If during the preparation of the environmental analysis, it is determined that an Environmental Impact Statement (EIS) is warranted, comments received during this scoping period will be considered in the EIS preparation.

Scoping meetings will be held at the following locations:

Wright Patterson AFB, OH: June 19, 6:00 p.m. Fairborn High School, 900 E. Dayton-Yellow Springs Road, Fairborn, OH 45324, Cafeteria

Tinker AFB, OK: June 21, 6:00 p.m., Huey Long Community Center, 4505 SE 15th St., Del City, Oklahoma, Community Hall

Ellsworth AFB, SD: June 23, 6:00 p.m., Ramokota Inn and Conference Center, 2111 N. LaCrosse St., Rapid City, South Dakota, Sylvan Room

Edwards AFB, CA: June 26, 6:00 p.m., Best Western, Antelope Valley Inn, 44055 N. Sierra Hwy, Lancaster, CA 93534, Convention Center, East Wing

Beale AFB, CA: June 27, 6:00 p.m., Sutter Count Library, 750 Forbes Avenue, Yuba City, CA 95991, the Meeting Room.

Please direct any written comments or requests for information to Ms. Sheryl Parker, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9334.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–13950 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on July 5, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC–PAD–RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0037–105a SAFM

SYSTEM NAME:

Civilian Employee Pay System *(February 22, 1993, 58 FR 10002).*

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7333, Defense Civilian Pay System.

[FR Doc. 00–13895 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Small Business Administration (SBA) and DoD that records are being matched by computer. The record subjects are SBA delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are indebted and or delinquent in their repayment of debts owed to the United States Government under programs administered by SBA.

DATES: This proposed action will become effective July 5, 2000, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and SBA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that SBA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures.

A copy of the computer matching agreement between the SBA and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Deputy Assistant Administrator, Office of the Portfolio Management, 409 Third Street, SW, Suite 8300, Washington, DC 20416.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice were submitted on May 16, 2000, to the House Committee on Government Reform, the Senate Committee on Government Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 30, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program between the Small Business Administration, and the Department of Defense for Debt Collection.

A. *Participating agencies:* Participants in this computer matching program are the Small Business Administration (SBA) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Small Business Administration is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed, serving, or retired, who owe delinquent debts to the Federal Government under certain programs administered by SBA. SBA will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by SBA of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to OPM in the case of retired non-postal civilian employees, to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government); 31 U.S.C. 3711 Collection and Compromise; 31 U.S.C. 3716 Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller); Section 101(1) of Executive Order 12731; 4 CFR 101.1–105.5, Federal Claims Collection Standards; 5 CFR 550.1101—550.1108, Collection by Offset from Indebted Government Employees (OPM); 13 CFR, part 140, Debt Collection (SBA).

D. *Records to be matched:* The systems of records described below contain an appropriate routine use provisions which permits disclosure of information between agencies.

SBA will use personal data from the Privacy Act record system identified as SBA 075, entitled, 'Loan Case File', published in the **Federal Register** at 56 FR 8022 on February 26, 1991, but amended in the **Federal Register** at 65 FR 1422 on January 10, 2000 and corrected at 65 FR 459 on January 27, 2000.

DoD will use personal data from the Privacy Act record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 64 FR 42101, August 3, 1999.

E. *Description of computer matching program:* SBA, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs SBA administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the SBA file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of personnel records of non-postal Federal civilian employees and military members, both active and retired. The 'hits' or matches will be furnished to SBA. SBA is responsible for verifying and determining that the data on the DMDC electronic reply tape file are consistent

with SBA source file and for resolving any discrepancies or inconsistencies on an individual basis. SBA will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file tape provided by SBA will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 25,000 delinquent debtors.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.1 million records of active and retired non-postal Federal civilian employees.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by SBA to those individuals matched (hits) consisting of SBA'S verification of debt; a minimum of 30-day written notice to the debtor explaining the debtor's rights; opportunity for the debtor to examine and copy SBA documentation relating to the debt; provision for debtor to seek the SBA review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the SBA for repayment. Only when all of the steps have been taken will SBA disclose information, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies SBA within 30 days from the date of the notice, SBA will infer that the data provided the individual is accurate and correct and will take the next step, as authorized by law, to recoup the delinquent debt.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time and will be repeated on an annual basis. By agreement between SBA and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920 Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 00–13896 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, June 12, 2000 from 8:30 a.m. to 11:45 a.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Academy, Annapolis, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C. Due to unavoidable delay in administrative processing, the 15 days advance notice could not be provided.

Dated: May 30, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–14115 Filed 6–2–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on July 5, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The record system being amended is set forth below, as amended, published in its entirety.

Dated: May 30, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05041–1

SYSTEM NAME:

Inspector General (IG) Records *(March 18, 1997, 62 FR 12806).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace '901 M Street, SE' with '1014 N Street, SE, Suite 100'.

* * * * *

N05041–1

SYSTEM NAME:

Inspector General (IG) Records.

SYSTEM LOCATION:

Office of the Naval Inspector General, Building 200, 1014 N Street, SE, Suite 100, Washington DC 20374–5006; Inspector General offices at major commands and activities throughout the Department of the Navy and other naval activities that perform inspector general (IG) functions. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been the subject of, witness for, or referenced in an Inspector General (IG) investigation, as well as any individual who submits a request for assistance or complaint to an Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters/transcriptions of complaints, allegations and queries; tasking orders from the Department of Defense Inspector General, Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps; requests for assistance from other Navy/Marine Corps commands and activities; appointing letters; reports of investigations, inquiries, and reviews with supporting attachments, exhibits and photographs; records of interviews and synopses of interviews; witness statements; legal review of case files; congressional inquiries and responses; administrative memoranda; letters and reports of action taken; referrals to other commands; letters to complainants and subjects of investigations; court records and results of nonjudicial punishment; letters and reports of adverse personnel actions; financial and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5014, Office of the Secretary of the Navy; 10 U.S.C. 5020, Naval Inspector General: details; duties; SECNAVINST 5430.57F, Mission and Functions of the Naval Inspector General, January 15, 1993.

PURPOSE(S):

To determine the facts and circumstances surrounding allegations or complaints against Department of the Navy personnel and/or Navy/Marine Corps activities.

To present findings, conclusions and recommendations developed from investigations and other inquiries to the Secretary of the Navy, Chief of Naval Operations, Commandant of the Marine Corps, or other appropriate Commanders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computerized data base.

RETRIEVABILITY:

By subject's or complainant's name; case name; case number; and other case fields.

SAFEGUARDS:

Access is limited to officials/employees of the command who have a need to know. Files are stored in locked cabinets and rooms. Computer files are protected by software systems which are password protected.

RETENTION AND DISPOSAL:

Permanent. Retired to Washington National Records Center when four years old. Transfer to the National Archives and Records Administration when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the local command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Naval Inspector General, 1014 N Street, SE, Suite 100, Washington Navy Yard, Washington, DC 20374–5006 or the relevant command's IG office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name of the requester and/or case number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainants; witnesses; Members of Congress; the media; and other commands or government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2),

and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 00–13894 Filed 6–2–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.033]

Student Financial Assistance Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for filing the ''Institutional Application for the Work-Colleges Program.''

SUMMARY: The closing date for the institutional application for the Work-Colleges Program (2000–2001 award year) is June 29, 2000. To participate in the Work-Colleges program, an institution must be a public or private nonprofit institution that requires all resident students to participate in a comprehensive work-learning program. (See **SUPPLEMENTARY INFORMATION** for a complete description of the requirements.) The Work-Colleges Program along with the Federal Work-Study Program and the Job Location and Development Program are known collectively as the Federal Work-Study programs. The Work-Colleges Program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: *Closing Date and Methods for Submitting the Institutional Application and Agreement.* To participate in the Work-Colleges Program and to apply for funds for that program for the 2000–2001 award year, an eligible institution must mail or hand deliver its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' to the Department on or before June 29, 2000. If you choose you may fax or e-mail your ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' by 4 p.m. eastern time on June 29, 2000. You must fax the form to Richard Coppage at (202) 260–0522 or (202) 205–1919 or E-mail to the following address: Richard__Coppage@ed.gov.

ADDRESSES: *Applications and Agreements Delivered by Mail.* An institution must address an institutional application and agreement delivered by mail to Mr. Richard Coppage, Work-Colleges Program, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, Portals Building, Suite 600D, Washington, D.C. 20202. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service: (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an institutional application and agreement is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

The Secretary encourages an institution to use certified or at least first-class mail. Institutions that submit an application and agreement after the closing date of June 29, 2000, are not considered for participation or funding under the Work-Colleges Program for award year 2000–2001.

Applications and Agreements Delivered by Hand. If an institution delivers its institutional application and agreement by hand, it must deliver the institutional application and agreement to Mr. Richard Coppage, Work-Colleges Program, Student Financial Assistance, Portals Building, 1250 Maryland Avenue, SW., Suite 600D Washington, D.C. 20202. The Secretary accepts hand-delivered institutional applications and agreements between 8 a.m. and 4 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. The Secretary will not accept an institutional application and agreement for the 2000–2001 award year that is delivered by hand after 4:00 p.m. on June 29, 2000.

SUPPLEMENTARY INFORMATION: Under the Work-Colleges Program, we allocate funds when available for that program to eligible institutions. We will not allocate funds under the Work-Colleges Program for award year 2000–2001 to any eligible institution unless the institution files its ''Institutional Application and Agreement for Participation in the Work-Colleges Program'' by the closing date. If an institution submits its application and agreement after the June 29, 2000 closing date, we will use this application and agreement to determine the institution's eligibility to participate in the Work-College Program beginning with the 2001–2002 award year.

To apply for participation and funding under the Work-Colleges Program, an institution must satisfy the definition of ''work-college'' in section 448(e) of the HEA. The term ''work-college'' under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires the participation of all resident students in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

Applicable Regulations

The following regulations apply to the Work-Colleges Program:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Work-Study Programs, 34 CFR part 675.

(4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(5) New Restrictions on Lobbying, 34 CFR part 82.

(6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Coppage Work-Colleges Program, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Portals Building, Suite 600D, Washington, D.C. 20202. Telephone (202) 708–4694. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape or computer diskette) by contacting the Alternate Format Center at (202) 260–9895 between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday.

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Program Authority: 42 U.S.C. 2756b.

Dated: May 30, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–13947 Filed 6–2–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted renewals for an additional three years for the information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) a summary of the collection of information, type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Comments should also be addressed to the Office of Information, Records and Resource Management at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Peter J. Grahn, Jr., Office of Information, Records and Resource Management (SO–31), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Grahn may be contacted by telephone at (301) 903–4653, FAX at (301) 903–6223, or e-mail at Peter.Grahn@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The information collections submitted to OMB for review were:

1. *Current OMB No.:* 1910–0300. *Package Title:* Environment, Safety and Health. *Summary:* A three-year extension is requested, which includes both mandatory and voluntary response obligations. *Purpose:* This information is required by the Department to ensure that Departmental environment, safety and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains nine information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 5,050. *Estimated Total Burden Hours:* 205,050.

2. *Current OMB No.:* 1910–0500. *Package Title:* Financial Management. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that financial management resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors. The package contains 13 information and/or recordkeeping requirements. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 12,715. *Estimated Total Burden Hours:* 164,528.

3. *Current OMB No.:* 1910–1400. *Package Title: Compliance Statement:* Energy/Water Conservation Standards for Appliances. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that manufacturers test and maintain records concerning the energy or water consumption of covered products, and precludes the distribution of any such products that do not meet standards established by Congress. By regulation (10 CFR 430.62(a)), DOE requires manufacturers of covered products to submit a compliance statement for each new basic model of a product. The package contains 14 information and/or recordkeeping requirements. *Type of Respondents:* Manufacturers of products covered in Part 430 of Title 10 of the Code of Federal Regulations. *Estimated Number of Responses:* 99. *Estimated Total Burden Hours:* 1,584.

4. *Current OMB No.:* 1910–5102. *Package Title:* Reporting and Recordkeeping Requirements for Make-or-Buy Plans. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that the Department's management and operations are subcontracting in the most cost-effective and efficient manner. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 36. *Estimated Total Burden Hours:* 5,350.

5. *Current OMB No.:* 1910–5103. *Package Title:* Reporting and Recordkeeping Requirements for Safety Management System. *Summary:* A three-year extension is requested for these mandatory response obligations. *Purpose:* This information is required by the Department to ensure that the Department's management and operating contractors are performing work safety at DOE facilities. *Type of Respondents:* DOE management and operating contractors and offsite contractors. *Estimated Number of Responses:* 7. *Estimated Total Burden Hours:* 2,450.

Statutory Authority: Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, May 30, 2000.

Howard Landon,

Director, Office of Special Projects.

[FR Doc. 00–13966 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Stateline Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA and Walla Walla County, Washington, intend to jointly prepare an EIS on the proposed Stateline Wind Project, located along the Oregon-Washington border in Walla Walla County, Washington, and Umatilla County, Oregon. FPL Energy Vansycle LLC (FPL Energy) proposes to construct and operate the 300 megawatt (MW) wind generation facility; BPA proposes to purchase up to 300 MW of the electrical output from the project and to provide transmission services. The EIS will consider the potential site-specific impacts of the construction and operation of the wind project itself, as well as any related transmission facilities. In addition, the EIS will take a broad programmatic look at the surrounding Potential Wind Power Development Area and the associated cumulative biological impacts.

This action may involve floodplain and wetlands located in Walla Walla County, Washington, and/or Umatilla County, Oregon. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act (NEPA).

DATES: BPA has established a 30-day scoping period during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. Written comments are due to the address below no later than July 7, 2000. Comments may also be made at the EIS scoping meetings to be held on June 14, 15, and 22, 2000.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov.*

The EIS scoping meetings will be held at Helix High School, 120 Main Street, Helix, Oregon, on Wednesday, June 14, 2000, from 6:30 p.m. to 9 p.m., at Touchet High School, 90 Champion Street, Touchet, Washington, on Thursday, June 15, 2000, from 6:30 p.m. to 9 p.m.; and at BPA, Room 470, 905 NE 11th Avenue, Portland, Oregon, on June 22, 2000, from 1 p.m. to 3 p.m. At these informal meetings, FPL Energy will provide information, including maps and visual simulations, about the wind project; State and County officials will describe their related processes. Written information will also be available, and BPA staff will answer questions and accept oral and written comments.

FOR FURTHER INFORMATION CONTACT: Katherine S. Pierce B KECP–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–3962, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION:

Background

Restructuring in the electric utility industry has resulted in increased demand for energy produced by new renewable resources. Part of this demand is due to the increased ability consumers have to choose their power provider. Some of these consumers want to encourage the development of renewable energy resources, and want their power provider to give them options for doing this. Some Northwest states (such as Oregon) have passed laws that require utilities to offer their customers a power rate that includes significant new renewable energy resources. In other cases, individual utilities have chosen to dedicate a portion of their wholesale power purchases to new renewable resources and are looking to BPA to supply them. In addition, the Northwest Power Planning Council's Fourth Conservation and Electric Power Plan recommends that Northwest utilities offer green power purchase opportunities as a way to help the region integrate renewable resources into the power system in the future.

Purpose and Need

In the face of regional growth in electrical loads and increasing constraints on the existing energy resource base, BPA needs to acquire resources that will contribute to diversification of the long-term power supply prospects in the region. The purposes of acquiring a diverse resource portfolio include:

- Protecting BPA and its customers against risk;
- Assuring consistency with BPA's responsibility under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) to encourage the development of renewable energy resources;
- Meeting customer demand for energy from renewable energy resources, thereby assuring consistency with BPA's Business Plan EIS (DOE/EIS–0183, June 1995) and Business Plan ROD;
- Assuring consistency with the resource acquisition strategy of BPA's Resource Programs EIS (DOE/EIS-February 1993) and ROD; and
- Meeting the objective in the January 2000 Strategic Plan of BPA's Power Business Line to acquire at least 150 average MW of new renewable resources by the end of fiscal year 2006 in order to meet customer demand for new renewable resources.

Proposed Action

BPA proposes to execute one or more power purchase and transmission services agreements to acquire and transmit up to the full electrical output of FPL Energy's proposed Stateline Wind Project. FPL Energy proposes to construct and operate this 250– to 300–MW wind generation facility, located in southern Walla Walla County, Washington, and in Umatilla County, Oregon, along the Oregon-Washington border. This location is several miles north and west of the existing 24.9–MW Vansycle Ridge wind project, located in Umatilla County, Oregon. The proposed project site consists of ridge tops located in an area of rolling, arid hills bisected by canyons. Land uses within the project site consist of non-irrigated agriculture-winter wheat and cattle grazing. The project will be located entirely on private farmland, and no project facilities will be constructed upon lands owned by the States of Oregon or Washington or by the United States.

The approximately 250 to 450 turbines will be arranged in several

''strings,'' with generally approximately 200 to 300 feet between turbines in each string. FPL Energy is considering using either 660-kilowatt (kW) turbines similar to those used at the existing Vansycle Wind Project, or larger, up to 1,300-kW (1.3 MW) turbines if needed to meet the demand for power. If the 660-kW turbines are used, the turbines will be about 165 feet tall at the turbine hub, and about 245 feet tall including the turbine blades. The diameter of the circle covered by the rotors will be about 154 feet. Each turbine will be mounted on a tubular steel tower installed on a concrete foundation approximately 20 feet in diameter. The pad will be buried up to 15 feet underground. If the 1,300-kW turbines are needed, all these dimensions will be somewhat greater. Agricultural activities generally can take place directly adjacent to the turbine pads.

The turbine towers will be tubular steel structures. The turbines will be linked to each other using underground electrical cables. Power from all turbines in the project will be transmitted by a combination of underground and overhead cables to similar strings and then to a proposed substation to be located in Washington. The fenced substation site will occupy approximately one to two acres. From the substation site, power from the project will be transmitted by new above-ground lines (likely H-frame wood towers) to interconnect with one or more existing transmission lines: about eight to ten miles to a 115-kilovolt (kV) BPA transmission line located north of the Walla Walla River and/or a 230-kV PacifiCorp transmission line located two miles to the west of the project (south of the Walla Walla River). Other facilities required as part of the project are access roads, an operations and maintenance (O&M) building, and a water tank. Most of the access roads will consist of improved, graveled, existing farm roads, with some construction of new graveled roads in areas where usable farm roads do not exist. The O&M building will probably be located near Hatchgrade Road to provide good visibility of the turbines.

FPL Energy proposes to begin construction in late 2000 or early 2001. The Stateline Wind Project is scheduled to begin commercial operation late in 2001, and would operate for at least 25 years.

Process to Date

FPL Energy has filed an application for a Conditional Use Permit from Walla Walla County, Washington, Regional Planning. Oregon Department of Energy has received and approved FPL Energy's request for Expedited Review of FPL Energy's Application for a Site Certificate. In addition, the Oregon Department of Energy and the Oregon Department of Fish and Wildlife have suggested that the EIS address both the Stateline Wind Project (at a site-specific level) and a broader Potential Wind Development Area (at a broad, programmatic level). This Area was the subject of a baseline avian study conducted in the mid-1990's. Some environmental analyses have already been conducted by FPL Energy for the Stateline Wind Project. Surveys for sensitive plant and animal species were conducted in the spring of 1999 and surveys for sensitive animal species and cultural resources were conducted in the spring of 2000. Scoping will help identify what additional studies will be required.

Alternatives Proposed for Consideration

The alternatives include the proposed action (executing a power purchase agreement with FPL Energy for up to 300 MW of electrical energy from the proposed Stateline Wind Project) and the No Action alternative. In addition, at least two transmission alternatives will be examined in the EIS.

Identification of Environmental Issues

For other wind projects, noise, visual impacts, cultural resources, and impacts to sensitive plant and animal species have been identified as potential environmental issues. The scoping process will help identify the range of environmental issues that should be addressed in this EIS. Maps and further information are available from BPA at the address above.

When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public comment meetings for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS, expected to be published in late 2000 or early 2001. BPA's subsequent decision will be documented in a Record of Decision (ROD).

The EIS will satisfy the requirements of the NEPA and the Washington State Environmental Policy Act (SEPA). The State of Oregon will coordinate its Energy Facility Siting process with the NEPA/SEPA process.

Issued in Portland, Oregon, on May 25, 2000.

Terence G. Esvelt,

Acting Administrator and Chief Executive Officer.

[FR Doc. 00–13965 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Coeur d'Alene Tribal Trout Production Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to fund construction of a supplementation hatchery facility for the Coeur d'Alene Tribe in floodplain and wetlands located in Kootenai and Benewah Counties, Idaho. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATES: Comments are due to the address below no later than June 20, 2000.

ADDRESSES: Submit comments to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Eric N. Powers—KECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5823, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: The project would involve construction of a fish hatchery and two acclimation ponds. The hatchery would be located within the 100-year floodplain of Rock Creek (T47N, R4W, Section 31); the acclimation sites would affect wetlands associated with the tributaries of Benewah Creek (T45N, R3W, Section 17) and Alder Creek (T45N, R3W, Section 33).

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on May 25, 2000.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 00–13968 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2187–000]

CMS Distributed Power, L.L.C.; Notice of Issuance of Order

May 30, 2000.

CMS Distributed Power, L.L.C. (CMSDP) submitted for filing a rate schedule under which CMSDP will engage in wholesale electric power and energy transactions as a marketer. CMSDP also requested waiver of various Commission regulations. In particular, CMSDP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions for liability by CMSDP.

On May 24, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CMSDP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CMSDP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CMSDP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order 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. 00–13915 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2225–000]

Duke Energy St. Lucie, LLC; Notice of Issuance of Order

May 30, 2000.

Duke Energy St. Lucie, LLC (Duke Energy St. Lucie) submitted for filing a rate schedule under which Duke Energy St. Lucie will engage in wholesale electric power and energy transactions as a marketer. Duke Energy St. Lucie also requested waiver of various Commission regulations. In particular, Duke Energy St. Lucie requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Energy St. Lucie.

On May 25, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Energy St. Lucie should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period Duke Energy St. Lucie is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Energy St. Lucie's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 26, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–13916 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1262–003]

Monongahela Power Company, Potomac Edison Company, West Penn Power Company (Allegheny Power); Notice of Filing

May 30, 2000.

Take notice that on May 15, 2000, Monongahela Power Company, Potomac Edison Company and West Penn Power Company, doing business as Allegheny Power tendered for filing revisions to First Revised Sheet Nos. 215 through 223 filed with the Commission.

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 June 9, 2000. Protest 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13914 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2494]

Puget Sound Energy, Inc., White River Project, Washington; Notice

May 30, 2000.

The following Commission staff are assigned to facilitate the preparation of an offer of settlement in these licensing proceedings that may be presented to the Commission.

Office of General Counsel

Keith Brooks (202) 208–1229.

Merrill Hathaway (202) 208–0825.

Office of Energy Projects

Bob Easton (202) 219–2782.

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13918 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2016]

Tacoma Power; Cowlitz River Project, Washington; Notice

May 30, 2000.

The following Commission staff are assigned to assist in the preparation of an offer of settlement in these licensing proceedings that may be presented to the Commission.

Office of General Counsel

John Clements (202) 208–2070.

Office of Energy Projects

Bob Easton (202) 219–2782.

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13917 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2405–001, et al.]

Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 2000.

Take notice that the following filings have been made with the Commission:

1. Cinergy Services, Inc.

[Docket No. ER00–2405–001]

Take notice that on May 24, 2000, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing an amendment to its original filing regarding the Interconnection Agreement Among the City of Lebanon, Ohio, The Cincinnati Gas & Electric Company and Cinergy Services, Inc.

Cinergy states that it has served a copy of its filing upon the City of Lebanon, Ohio and the Public Utilities Commission of Ohio.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket No. ER00–1365–000]

Take notice that on May 23, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Implementation, sent to Market Participants and posted on the ISO Home Page on May 19, 2000, which specifies that, effective June 1, 2000, the ISO will implement pre-dispatch of Reliability Must-Run (RMR) Units.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Hardee Power Partners Limited

[Docket No. ER00–2569–000]

Take notice that on May 23, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with El Paso Merchant Energy, L.P. (El Paso) under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on May 1, 2000.

Copies of the filing have been served on El Paso and the Florida Public Service Commission.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company

[Docket No. ER00–2571–000]

Take notice that on May 23, 2000, Duquesne Light Company (Duquesne), tendered for filing, under Duquesne's market-based rate tariff, a long-term service agreement between Duquesne and Orion Power Midwest, L.P. (Orion).

Duquesne reports that service commenced to Orion on April 28, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc. and Kansas Gas and Electric Company

[Docket No. ER00–2572–000]

Take notice that on May 23, 2000, Western Resources, Inc. (WR), tendered for filing the 9th Revised Exhibit B, the 7th Revised Exhibit C, and the 7th Revised Exhibit D to its Electric Power, Transmission, and Service Contract with Kansas Electric Power Cooperative Inc. (KEPCo). WR, on behalf of its wholly owned subsidiary the Kansas Gas and Electric Company (KGE), also submitted the 11th Revised Exhibit B, and the 7th Revised Exhibit C to KGE's Electric Power, Transmission, and Service Contract with KEPCo.

Copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2573–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with NewEnergy, Inc., the agreement allows NewEnergy to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2574–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with NewEnergy, Inc., the agreement allows NewEnergy to take firm point-to-point transmission service from LG&E/KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2575–000]

Take notice that on May 23, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral transmission service agreement with Amerada Hess Corporation. The agreement allows Amerada Hess to take firm point-to-point transmission service from LG&E/ KU.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Kincaid Generation L.L.C.

[Docket No. ER00–2577–000]

Take notice that on May 23, 2000, Kincaid Generation L.L.C. (KGL), tendered for filing an agreement for the sale of electric energy and capacity by KGL to Commonwealth Edison Company, dated May 9, 2000.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–2578–000]

Take notice that on May 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of cancellation for CSW Energy Services, Inc. (CSW ESI), to terminate its membership in PJM, to cancel certain service agreements between PJM and CSW ESI, and to remove it as a signatory to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA). PJM also is filing a revised Schedule 17 to the RAA removing CSW ESI from the list of signatories to the RAA.

PJM states that it served a copy of its filing on all of the members of PJM and the signatories to the RAA, including CSW Energy Services Inc., and each of the state electric regulatory commissions within the PJM control area.

Comment date: June 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER00–2579–000]

Take notice that on May 24, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Wisconsin Electric Power Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on April 26, 2000.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER00–2580–000]

Take notice that on May 24, 2000, Tucson Electric Power Company tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 38 (Plains Electric Generation and Transmission Cooperative, Inc. and Tucson Electric Power Company Economy Energy Interchange Agreement, dated May 7, 1980).

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00–2581–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and NewEnergy California, L.L.C., (NewEnergy). The ISO states that this PLA is designed to set forth the terms and conditions that govern NewEnergy's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on NewEnergy California, L.L.C. and the California Public Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER00–2582–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and New West Energy (New West). The ISO states that this PLA is designed to set forth the terms and conditions that govern New West's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on New West Energy and the California Public Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER00–2583–000]

Take notice that on May 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Load Agreement (PLA) between the ISO and Ancillary Service Coalition (ASC). The ISO states that this PLA is designed to set forth the terms and conditions that govern ASC's provision of Ancillary Services. The PLA is part of a trial program for the summer of 2000 designed to increase participation of Load resources in the ISO's markets.

The ISO requests that the PLA be made effective as of June 15, 2000.

The ISO states that this filing has been served on Ancillary Service Coalition and the California Public Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company

[Docket No. ER00–2584–000]

Take notice that on May 24, 2000, Jersey Central Power & Light Company (doing business as and referred to as GPU Energy), tendered for filing a Generation Facility Interconnection Agreement between GPU Energy and Middlesex Generating Co., L.L.C.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Orion Power MidWest, L.P.

[Docket No. ER00–2585–000]

Take notice that on May 24, 2000 Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission a long-term Energy Agency and Marketing Agreement with Duquesne Light Company for the sale of energy under Orion Power MidWest's market-based rate tariff, FERC Electric Rate Tariff, Volume No. 1.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Northern Indiana Public Service Company

[Docket No. ER00–2586–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and NewEnergy, Inc., (NewEnergy).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to NewEnergy pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to NewEnergy, Inc., the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER00–2587–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Public Service Company of Colorado (Public Service).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Public Service pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to Public Service Company of Colorado, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER00–2588–000]

Take notice that on May 24, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Allegheny Energy Supply Company, LLC (Allegheny).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Allegheny pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 25, 2000.

Copies of this filing have been sent to Allegheny Energy Supply Company, LLC, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Duke Energy Corporation

[Docket No. ER00–2589–000]

Take notice that on May 24, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with North Carolina Municipal Power Agency Number 1 for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on May 1, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Orion Power MidWest, L.P.

[Docket No. ER00–2590–000]

Take notice that on May 24, 2000, Orion Power MidWest, L.P. (Orion Power MidWest), tendered for filing with the Federal Energy Regulatory Commission a long-term Power Sales Agreement with Strategic Energy L.L.C., for the sale of energy under Orion Power MidWest's market-based rate tariff, FERC Electric Rate Tariff, Volume No. 1.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. The Montana Power Company

[Docket No. ER00–2591–000]

Take notice that on May 24, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission an executed Reliability Management System Agreement with PPL Montana, LLC.

A copy of the filing was served upon PPL Montana, LLC.

Comment date: June 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Milford Power Limited Partnership

[Docket No. ER00–2592–000]

Take notice that on May 23, 2000, Milford Power Limited Partnership tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking a waiver of certain regulations of the Commission and an order accepting its Revised FERC Electric Tariff No.1 for filing, to be effective on the date of the Commission's order on such petition.

Revised FERC Electric Tariff No.1 provides for the sale of capacity and energy at agreed prices to any wholesale customer.

Comment date: June 13, 2000, 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 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–13913 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2866–008]

Metropolitan Water Reclamation District of Greater Chicago; Notice of Availability of Draft Environmental Assessment

May 30, 2000.

In accordance with the National Environmental Police Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 CFR 47897), the Office of Energy Projects has reviewed the application for a new license for the Lockport Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project is located on the Chicago Sanitary and Ship Canal, in Will County, Illinois.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The DEA may also be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. For further information, contact Hector M. Perez, Project Coordinator, at (202) 219–2843.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13919 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: May 30, 2000, 65 FR 34465.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 31, 2000, 10 a.m.

CHANGE IN THE MEETING: The following Docket No. and Company has been added as Item CAE–35 on the Agenda scheduled for the May 31, 2000 meeting.

Item No.—Docket No. and Company

CAE–35
- ER00–1969–000, New York Independent System Operator, Inc.
- EL00–57–000, Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
- EL00–60–000, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
- EL00–63–000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
- EL00–64–000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.

David P. Boergers,

Secretary.

[FR Doc. 00–14109 Filed 6–1–00; 11:40 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

2005 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power allocations.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (Sierra Nevada Region) in the **Federal Register**. The Marketing Plan specifies terms and conditions under which Western will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2005. The Marketing Plan sets aside a portion of the Sierra Nevada Region's marketable power resources to establish a 2005 Resource Pool for new power allocations. Western published a Call for 2005 Resource Pool Applications and a Notice of Extension to file applications in the **Federal Register**. This notice sets forth Western's proposed allocations of power from the 2005 Resource Pool.

DATES: Entities interested in commenting on proposed allocations must submit written comments to Western's Sierra Nevada Customer Service Regional Office at the address below. Western must receive written comments by 4 p.m., PDT, on July 5, 2000. Entities are encouraged to hand-deliver or use certified or electronic mail for delivery of comments. Western will accept comments received via regular mail through the United States Postal Service if postmarked at least 3 days before July 5, 2000, and received no later than July 10, 2000. Western will not consider comments that are received after the prescribed date and time. Western will publish a Notice of Final 2005 Resource Pool Allocations in the **Federal Register** after evaluating all comments.

ADDRESSES: Written comments should be sent to Howard Hirahara, Power Marketing Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, or by electronic mail to hirahara@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Howard Hirahara, Power Marketing Manager, (916) 353–4421, or by electronic mail at hirahara@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Pursuant to its authorities under the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved, Western established the Marketing Plan for sale of power by the Sierra Nevada Region after 2004. On June 25, 1999, Western published the Marketing Plan in the **Federal Register** (64 FR 34417). Pursuant to Western's authorities under the above acts and applying the rules developed in the Marketing Plan, with this notice, Western sets forth and seeks comments on its proposed allocations of power from the 2005 Resource Pool.

Regulatory Procedural Requirements

Western addressed the regulatory procedure requirements in its rulemaking for the Marketing Plan (64 FR 34417). The proposed allocation of power in this notice is an application of the Marketing Plan and is not a separate rulemaking.

Background

On October 19, 1999, Western published the Call for 2005 Resource Pool Applications in the **Federal Register** (64 FR 56343). On December 9, 1999, Western published a Notice of Extension in the **Federal Register** (64 FR 69018). The Call for 2005 Resource Pool

Applications required that applications be submitted by December 20, 1999, and the Notice of Extension extended the filing date by 30 days to January 19, 2000.

CVP power facilities are operated by the United States Department of the Interior, Bureau of Reclamation (Reclamation), and include 11 powerplants with a maximum operating capability of about 2,044 megawatts (MW), and an estimated average annual generation of 4.6 million megawatthours (MWh). Western markets and transmits power available from the CVP.

The Washoe Project's Stampede Powerplant is also operated by Reclamation and has a maximum operating capability of 3.65 MW with an estimated annual generation of 10,000 MWh. The Sierra Pacific Power Company owns and operates the only transmission system available for access to the Stampede Powerplant.

Western owns the 94 circuit-mile Malin-Round Mountain 500-kilovolt (kV) transmission line (an integral section of the Pacific Northwest-Pacific Southwest Intertie), 803 circuit miles of 230-kV transmission line, 7 circuit miles of 115-kV transmission line, and 44 circuit miles of 69-kV and below transmission line. Western also has part ownership in the 342-mile California-Oregon Transmission Project. Many of Western's existing customers have no direct access to Western's transmission lines and receive service over transmission lines owned by other utilities.

The Marketing Plan describes how the Sierra Nevada Region will market its power resources beginning January 1, 2005, through December 31, 2024. Western proposes to allocate portions of the 2005 Resource Pool to applicants meeting the eligibility criteria listed in the Marketing Plan. Once the 2005 Resource Pool allocations have been finalized, Western will offer contracts to allottees for a percentage of the Base Resource. If requested, Western will work with customers to develop a customized product to meet their needs, as more fully described in the Marketing Plan. Western will also establish a 2015 Resource Pool for new allocations under a separate public process.

Proposed 2005 Resource Pool Allocations

Under the Marketing Plan, a two-step process was undertaken by Western in determining proposed power allocations. First, Western determined which applicants met the eligibility criteria. Next, Western used the allocation criteria to determine allocation amounts. Western used its discretion to determine which eligible entities received a proposed allocation and the amount of the proposed allocation. Western received 34 applications for 442.861 MW of power from entities who are not currently customers and 24 applications for 610.761 MW of power from existing customers. Western's Base Resource is a variable amount based on actual generation that is surplus to project needs. Therefore, allocations are expressed as a percentage of the marketable resource. Megawatt amounts are given, assuming variable amounts of Base Resource, for illustrative proposes only.

The proposed 2005 Resource Pool allocations are preliminary and may be changed based on comments received. This notice formally requests comments related to the proposed allocations. Western will respond to comments received on the proposed allocations and publish its final 2005 Resource Pool allocations after the end of the public comment period.

Proposed allottees to receive power from the 2005 Resource Pool, allocations expressed as percentages of the Base Resource, and the megawatt amount of each allocation assuming a Base Resource of 500 MW, 1000 MW, and 1500 MW are as follows:

Proposed allottees	Percent	Base resource		
		500 MW (MW)	1000 MW (MW)	1500 MW (MW)
Bay Area Rapid Transit District	0.147	0.735	1.470	2.205
California State Universities (11 campuses)	0.221	1.100	52.210	3.315
California State University, Sacramento	0.092	0.460	0.920	1.380
Cawelo Water District	0.029	0.145	0.290	0.435
Coyote Valley Tribe of Pomo Indians	0.055	0.275	0.550	0.825
East Bay Municipal Utility District	0.054	0.270	0.540	0.810
Fallon, City of	0.221	1.105	2.210	3.315
Healdsburg, City of	0.087	0.435	0.870	1.305
Lassen Municipal Utility District	0.105	0.525	1.050	1.575
Lodi, City of	0.147	0.735	1.470	2.205
Lompoc, City of	0.120	0.600	1.200	1.800
Modesto Irrigation District	0.147	0.735	1.470	2.205
Placer County Water Agency	0.039	0.195	0.390	0.585
Reclamation District No. 108	0.043	0.215	0.430	0.645
Redding Rancheria	0.037	0.185	0.370	0.555
San Francisco, City and County of	0.147	0.735	1.470	2.205
Sonoma County Water Agency	0.028	0.140	0.280	0.420
Southern San Joaquin Municipal Utility District	0.037	0.185	0.370	0.555
Susanville Indian Rancheria	0.103	0.515	1.030	1.545
Table Mountain Rancheria	0.147	0.735	1.470	2.205
Truckee Donner Public Utility District	0.220	1.100	2.200	3.300
Turlock Irrigation District	0.128	0.640	1.280	1.920
University of California, Berkeley	0.221	1.105	2.210	3.315
University of California, San Francisco	0.175	0.875	1.750	2.625
Total	2.750	13.75	27.500	41.250

Contracting Process

Pursuant to the Marketing Plan, Western will begin the contracting process with allottees after publishing the final allocations in the **Federal Register**. Publication is tentatively scheduled for the summer of 2000. Allottees must execute an electric service contract to purchase the Base Resource no later than December 31, 2000, and the Custom Product, if desired, no later than December 31, 2002, unless otherwise agreed to in writing by Western. Electric service contracts will be effective upon execution by Western, and service will begin on January 1, 2005.

Dated: May 23, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–13967 Filed 6–2–00; 8:45 am]

BILLING CODE 6450–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6709–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a committee of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The Integrated Human Exposure Committee (IHEC) of the US EPA Science Advisory Board (SAB), will meet on July 10–11, 2000 in Meeting Room A&B, at the Radisson Governors Inn, P.O. Box 12168, Research Triangle Park, NC 27709 (located on I–40, Exit 280-Davis Drive. The hotel telephone number 919–549–8631. The meeting will begin 9 a.m. on July 10, and adjourn no later than 5 p.m. on July 11.

Purpose of the Meeting—EPA must be able to estimate the number of people exposed to various pollutants (as well as the magnitude and duration of the exposure in) order to evaluate the risks posed by these pollutants in the environment. To respond to these needs, EPA's Office of Research and Development sponsored three related pilot studies known as National Human Exposure Assessment Survey (NHEXAS). The NHEXAS studies tested protocols for acquiring population distributions of exposure measurements and by developing exposure databases for use in exposure models, exposure assessment, and risk assessment. The IHEC met in September 1998 to assess these studies and recommend future courses of action. The report resulting from this meeting (An SAB Advisory: The National Human Exposure Assessment Survey (NHEXAS) Pilot Studies (EPA–SAB–IHEC–ADV–99–004, February 1999) included a recommendation to develop a strategic plan for completing the analysis of the NHEXAS pilot data. The EPA drafted such a plan, intended to provide broad guidance to EPA decision makers on resources and to those who would undertake analyses. EPA subsequently requested that the IHEC review the draft strategic plan, resulting in the planned July meeting.

Charge to the Subcommittee—The Charge asks the IHEC to respond to the following four questions:

(a) Does the Strategy encompass all the significant needed analysis projects? If not, which should be added or deleted? (*e.g.,* is the list of projects good?)

(b) Even if all the projects are optimal, are they strategically presented and prioritized? Would alternative strategic criteria be useful? (*e.g.,* is the prioritization good?)

(c) Is the Strategy likely to be useful to ORD management for resource allocation (*e.g.,* is it of sufficient quality for managerial use)?

(d) Does the Strategy provide adequate guidance to scientists for developing the most useful analysis tasks?

Availability of Review Materials: The principal review document, Strategic Plan for the Analysis of the National Human Exposure Assessment Survey (NHEXAS) Pilot Study Data, is available on the Internet at the SAB website (http://www.epa.gov/sab), or by request to Ms. Brenda Thompson, phone 919–541–1346, or by email to thompson.brenda@epa.gov

For Further Information Contact: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (301) 812–2560, FAX (410) 286–2689; or via e-mail at samuelr717@aol.com. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon Eastern Daylight Time on June 28, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the

DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 25, 2000.

Donald G. Barnes,

Staff Director,, Science Advisory Board.

[FR Doc. 00–13977 Filed 6–2–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 8, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

May 3, 2000 (Open and Closed)

B. New Business

1. Regulation

Standards of Conduct Plain Language Rewrite [12 CFR Part 612] (Direct Final with Opportunity to Comment).

2. Reports

No Action Requests and Pilot Programs.

Approvals under Delegated Authorities.

Dated: June 1, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–14187 Filed 6–1–00; 3:07 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–900]

Implementation Procedures for the Report and Order and Memorandum Opinion and Order Addressing the 218–219 MHz Services (Formerly Known as Interactive Video and Data Services (IVDS))

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document addresses implementation procedures regarding restructuring options and remedial bidding credits for current and former 218–219 MHz licensees. These service and technical rules were modified to maximize the efficient and effective use of the band.

FOR FURTHER INFORMATION CONTACT: Ben Freeman or Nicole Oden of the Auctions and Industry Analysis Division at (202) 418–0660 or Jamison Prime of the Public Safety and Private Wireless Division at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 20, 2000. The complete text of the public notice, including Attachments A, B and C, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

I. Background

1. On September 10, 1999, the Federal Communications Commission (''Commission'') issued FCC 99–239 which modified the regulations governing the licensing of the 218–219 MHz Service (formerly known as IVDS) to maximize the efficient and effective use of the band. *See*, Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service (*218–219 MHz Order*) 64 FR 59656 (November 3, 1999). The *218–219 MHz Order*, among other things, modified service and technical rules for the band and extended the license term from five to ten years. The Commission also adopted a restructuring plan for existing licensees that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules (''Eligible Licensees''). Pursuant to the restructuring plan, Eligible Licensees must make elections on a per license basis, choosing between three options: (a) Reamortization and Resumption of Payments; (b) Amnesty; or (c) Prepayment (Prepayment-Retain or Prepayment-Return). Eligible Licensees that fail to submit a valid election with respect to any license by the Election Date will be assumed to have elected Amnesty for all of their 218–219 MHz licenses.

2. ''Ineligible Entities'' are those entities that made second down payments and: (i) made some installment payments, but were not current in their installment payments as of March 16, 1998, and did not have a grace period request on file in conformance with the former rules; or (ii) entities that never made any installment payments and did not have a timely filed grace period request on file. Ineligible Entities are not entitled to make elections, but will be granted debt forgiveness for any outstanding balances owed and have previously paid installment payments refunded. The Commission will release a separate Public Notice detailing the procedures by which entities may obtain a refund, with which Ineligible Entities should become familiar.

3. Under the Federal Claims Collection Act and related regulations, only the United States Department of Justice (''DOJ'') can compromise a claim in excess of $100,000. Because many of the debts subject to the *218–219 MHz Order* exceed $100,000 and involve FCC licenses subject to common facts and circumstances, the Commission recommended that DOJ approve the compromise of all 218–219 MHz Service debt as a package. On March 1, 2000, DOJ notified the Commission of its decision to approve the debt forgiveness portion of the *218–219 MHz Order*.

II. Procedures for Filing Election Notices

A. Mailing Address and Election Date

4. Election Notices may be filed with the Commission from 8:00 a.m. until 7:00 p.m. starting on the date of this Public Notice and ending at 7:00 p.m. on the Election Date. The Election Date will be the last business day of the first full month after the Order on Reconsideration, regarding the *218–219 MHz Order*, is released by the Commission. NO ELECTIONS OR CHANGES TO ELECTIONS WILL BE ACCEPTED AFTER 7:00 P.M. ON THE

ELECTION DATE. Election Notices should be sent to the Office of the Secretary, Room TW–B204, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C., 20554. In addition, a copy of Election Notices should be sent to Ms. Rachel Kazan, Room 4–A460, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

5. The Commission must *receive* all Election Notices, *no later than* 7 p.m. on the Election Date. *Eligible Licensees are solely responsible for ensuring the accurate and timely delivery of their Election Notices. Submission of Election Notices by FAX or electronic mail will NOT be accepted.*

B. Format of Election Notices

6. Although there is no specific form for Election Notices, they *must* contain the following information: (i) Licensee Name; (ii) Licensee Address; (iii) Licensee Phone Number; (iv) Contact Name; (v) Contact Phone Number; (vi) Contact FAX Number; (vii) Taxpayer Identification Number (TIN); (viii) License Number(s); and (ix) Market Area(s).

7. For each eligible license it has, the Eligible Licensee must make a *specific election for each individual license* designating one of the three election options: (i) Reamortization/Resumption (ii) Amnesty or (iii) Prepayment (Prepayment-Retain or Prepayment-Return). Licensees electing Prepayment must indicate which licenses they want to retain and which licenses, if any, are being returned to the Commission. Any individual filing an Election Notice for a license must be authorized by the Licensee to do so. See Attachment A of the Public Notice for a model Election Notice.

C. Changing Election Notices Prior to the Election Date

8. A previously filed Election Notice may be altered prior to 7:00 p.m. on the Election Date by submitting the following: (i) A statement that the licensee is rescinding its previously filed Election Notice; (ii) a new Election Notice which states its new election; and (iii) a copy of its previously filed Election Notice. These submissions must be simultaneously filed with the Office of the Secretary, Room TW–B204, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition, as with the original Election Notice, a copy of the submissions should be sent to Ms. Rachel Kazan, Room 4–A460, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

No changes or alterations to any elections will be accepted after 7:00 p.m. on the Election Date. Submission of Election Notice changes by FAX or electronic mail will NOT be accepted.

III. Failure To File an Election Notice

9. If an Eligible Licensee fails to file an Election Notice by the specified Election Date, the licensee's license(s) will automatically be placed in the Amnesty category. This will result in the automatic cancellation of the license(s). A list of the licenses that are eligible to participate in the 218–219 MHz restructuring plan, with the corresponding Eligible Licensees is Attachment B of the Public Notice.

A. Changes of Address

10. It is the sole responsibility and obligation of all entities subject to the *218–219 MHz Order,* current and former licensees, to keep the Commission apprised of any changes of address. Entities subject to the *218–219 MHz Order* that either do not have a current and correct address on file, or have not received a letter of eligibility, should contact the Commission immediately.

11. All change of address notices (or other administrative updates, such as a change in phone number or contact person) must be submitted in writing to the Federal Communications Commission, Attn: Darlene Reeder, 1270 Fairfield Road, Gettysburg, PA 17325–7245. Licensees should include their call sign, market number, and note that the letter is in reference to a 218–219 MHz Service license. For changes of address between now and the Election Date, licensees should also fax a copy of their letters to the FCC's Public Safety and Private Wireless Division in Washington, DC, attention Mr. Jamison Prime, at (202) 418–2643. Note: If a change of address relates to a sale of a license, the licensee must first apply for and receive FCC approval to assign its 218–219 MHz Service license(s).

IV. Defective Elections

12. Examples of defective elections are when a Licensee chooses an option for which it is not eligible; attempts to combine Prepayment with another election option; fails to include the required information in its Election Notice including a Taxpayer Identification Number (TIN) and a *specific election for each individual license* with corresponding license number; and/or places a condition upon its election. All of the 218–219 MHz licenses held by the licensee making a defective election will be placed in the Amnesty category, resulting in the automatic cancellation of their licenses.

V. Return of Radio Station Authorizations (Licenses)

13. Due to the changed licensing term for the 218–219 MHz services, from five (5) years to ten (10) years, the Commission will issue modified licenses. Therefore, the implementation of the election options by the Commission does not require Eligible Licensees to return their original licenses.

VI. Resumption of Installment Payments

14. For those licensees electing to retain some, or all, of their licenses and resume payments (Reamortization/Resumption), the first installment payment is due at the end of the third month after the Election Date. Installment payments may be made via wire transfer or through an Auction Installment Payment account (AIP) according to the terms set forth in the Installment Payment Acknowledgement. For specific payment instructions see Attachment C of the Public Notice. In addition, under the Commission's part 1 late payment rules for installment payments, licensees will have the option of utilizing the two ninety-day late payment periods, subject to late payment fees, if they need additional time in order to avoid default. Failure to make timely installment payments in this manner will trigger default and the automatic cancellation of the licenses.

VII. "New Money" Payments for Prepayment Option

15. For Eligible Licensees electing the Prepayment option, the Commission must receive all "new money" payments on or before the end of the third month after the Election Date. Licensees may pay the "new money" payment up to ten (10) days late, subject to a 5% late fee. Payments are to be made via wire transfer. Failure to pay the entire "new money" balance due on the license(s) for which Prepayment-Retain was elected will trigger default and the automatic cancellation of the license(s). For specific payment instructions of "new money," see Attachment C of the Public Notice.

VIII. Refunds and Credits

16. Refunds will be processed via Automated Clearing House Credits (ACH) (*i.e.* electronic funds transfer). In order for the Commission to issue refunds, all entities due a refund must submit the information necessary for an

electronic funds transfer. The Commission will endeavor to issue refunds to all parties within approximately 60 days of the Election Date. The Commission will release a separate Public Notice detailing the procedures by which entities may obtain a refund.

A. For Eligible Licensees

17. The availability of a refund, and the application of installment payment credit, depends upon the election(s) made for each license.

i. Amnesty

18. For an Eligible Licensee that elects Amnesty for all of its licenses, the Commission will retain the down payment (less any remedial bidding credit refund) and forgive the original principal balance and all interest payments due thereon. In addition, for Eligible Licensees in this category that have previously made installment payments, the Commission will refund installment payments in their entirety.

ii. Amnesty and Reamortization/Resumption

19. For an Eligible Licensee that holds more than one license and elects Amnesty for one or more of its licenses, and Reamortization/Resumption for its other license(s), all installment payments made on the Amnesty license(s) will be credited towards the outstanding balance due on the license(s) for which Reamortization/Resumption was elected. The installment payment credits will be applied against the accrued and unpaid interest on the retained license(s), with any excess funds being applied to the principal balance on each retained license. The installment payment credits will be prorated based on the net high bids of the retained licenses.

20. For Eligible Licensees electing Reamortization/Resumption, who may also be due a remedial bidding credit, the 25% remedial bidding credit will be applied prior to the reamortization of the principal and installment payments due on the license(s).

iii. Prepayment (Prepayment-Return and Prepayment-Retain)

21. Eligible Licensees electing Prepayment may retain or return as many licenses as they wish. The Commission will forgive all of the interest due on the retained licenses from grant date until the Election Date, however Eligible Licensees must pay off the original principal balance of the license(s) they retain. Eligible Licensees will be given a prepayment credit equal to 85% of the down payment and 100% of the installment payment(s) made on the license(s) they return to the Commission. If the original principal balance of the license(s) the Eligible Licensee wishes to retain is greater than the prepayment credit, the additional amount due is called ''New Money,'' and must be remitted to the Commission on or before the end of the third month after the Election Date. If the prepayment credit is greater than the original principal balances, the excess prepayment credits will be refunded to the licensee to the extent that the funds were generated from installment payments. No excess prepayment credits generated from down payments will be refunded.

B. Ineligible Entities

22. Ineligible Entities will have all previously paid installment payments refunded.

IX. Remedial Bidding Credit for Small Businesses

23. The Commission has eliminated women- and minority-owned business bidding credits, simultaneously granting credits of commensurate size to all small businesses. Any Eligible Licensee or Ineligible Entity that paid its first and second down payment, and met the small business qualifications at the time of auction, may receive a 25% remedial bidding credit. The Commission will process a refund of excess down payment equal to the difference between the down payment amounts based on the gross high bid and the net high bid. However, if the small business entity claimed to be a women- or minority-owned business at the time of auction, it already received a 25% bidding credit and therefore no refund is generated by the small business bidding credit. *A refund of an excess down payment to Ineligible Entities does not alter their eligibility status.* Where a licensee met the qualifications for a small business at the time of auction and paid for their licenses in full, but did not receive a women- or minority-owned business bidding credit, the Commission will process a refund based on the remedial bidding credit. Where licensees paid in full, the refund will be equal to the difference between the gross high bid and the net high bid. The Commission will issue a separate Public Notice with instructions detailing the refund procedures.

24. The refund of excess down payment due to the remedial bidding credit is separate and distinct from the 218–219 MHz restructuring plan. Eligible Licensees should not plan their election options around, or anticipate utilizing, the remedial bidding credit refund to meet any payment obligations to the Commission that may exist after the recalculation of balances or installment payments due on retained licenses. The payment deadline obligations of the licensee may not correspond with the refund of the remedial bidding credit, and the Commission will not credit, or offset, the amount owed after the recalculation based upon the anticipated refund. In addition, the Commission maintains no obligation to remit the remedial bidding credit refund prior to the licensee's payment deadline.

X. Issuance of Modified Radio Station Authorizations (Modified Licenses)

25. The Commission will issue modified licenses that reflect the terms and new expiration date adopted in the *218–219 MHz Order.* These licenses will be generated after the Election Date and, in the case of Eligible Licensees who choose Reamortization/Resumption, after the due date of the first installment payment. Licenses for which Reamortization/Resumption was elected will be conditioned upon full payment under the installment payment plan, pursuant to the Commission's rules.

26. Eligible Licensees choosing Amnesty will not receive modified licenses, as they will no longer hold valid licenses in the 218–219 MHz service. Eligible Licensees that elect Amnesty for some licenses and Reamortization/Resumption for others, will receive modified licenses only for those licenses for which it has elected to resume installment payments. Ineligible Entities will not receive modified licenses, as they do not hold valid licenses in the 218–219 MHz service.

27. Because the Commission will automatically mail these modified licenses, licensees need only contact the Commission regarding the issuance of modified licenses if the address used to mail eligibility status and implementation information (or the licensee's address of record, in the case of licenses acquired through lottery) is incorrect.

XI. Radio Station Authorization (License) Renewals

28. No action with regard to license renewals is necessary at this time. Licensees do not have to file any license renewals with the Commission until the current ten (10) year licensing term, from grant date, has expired.

XII. Issuance of Loan Documents

29. Eligible Licensees electing Reamortization/Resumption are required to execute loan documents in

the form of an Installment Payment Acknowledgement. In general, the acknowledgement contains a restatement of the amount of the debt owed, the payment terms under the *218–219 MHz Order,* and references other Commission rules and regulations related to the payment of installment debt. Licensees may also be required to execute a Uniform Commercial Code financing statement (UCC–1). The requisite loan document(s) must be executed and returned to the Commission (or its agent) within ten business days of receipt. An Eligible Licensee's failure to fully and timely execute and deliver the requisite loan document(s) will result in the automatic cancellation of the license.

30. Eligible Licensees electing Reamortization/Resumption are required to resume payments at the end of the third month after the Election Date, subject to applicable late payment rules, in accordance with the *218–219 MHz Order* without regard to whether the requisite loan document(s) have been issued, executed, or returned.

XIII. Additional Information

A. Web Site

31. Documents related to this notice and its implementation may be found on the Federal Communications Commission web site located at http://www.fcc/gov/wtb/auctions/218rest/218rest.html.

B. FCC Reference Center

32. Documents related to this notice and its implementation may also be examined and copied during normal business hours in the FCC Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, telephone (202) 418–0270.

C. ITS

33. In addition, documents may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–13974 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–G (Auction No. 31); DA 00–1075]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for September 6, 2000; Comment Sought on Modifying the Simultaneous Multiple Round Auction Design To Allow Combinatorial (Package) Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on proposed procedures for modifying the simultaneous multiple round auction design to allow combinatorial (''package'') bidding for Auction No. 31 should the Commission determine that package bidding may be feasible and appropriate for that auction.

DATES: Comments are due on or before June 9, 2000, and reply comments are due on or before June 16, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054, in accordance with § 1.51(c) of the Commission's rules. *See* 47 CFR 1.51(c). In addition, one copy of each pleading must be delivered to each of the following locations:

(1) The Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, SW, Suite CY–A257, Washington, DC 20554;

(3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4–A628, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter D. Strack, Bureau Chief Economist, Wireless Telecommunications Bureau, (202) 418–0600; Evan Kwerel, Senior Economist, Office of Plans and Policy, (202) 418–2030; Craig Bomberger, Auctions Analyst; Howard Davenport, Auctions Attorney; or Joel Rabinovitz, Auctions Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released May 18, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

I. Introduction

1. In adopting the service rules for the 747–762 and 777–792 MHz bands, the Commission determined that combinatorial bidding procedures could have significant benefits for the auction of the licenses in these bands, but declined to employ this type of auction because the statutory deadline did not allow sufficient time to implement such a design. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*700 MHz First Report & Order*) 65 FR 3139 (January 20, 2000). However, in light of (a) the announced delay of the auction until September 6, 2000; and (b) the continued progress in the design and testing of a combinatorial bidding system, as directed by Congress, the Wireless Telecommunications Bureau (''the Bureau'') now believes that sufficient time may exist to implement an auction design that allows for bids on combinations, or ''packages,'' of licenses. *See* Auction of Licenses for the 747–762 and 777–792 MHz Bands Postponed Until September 6, 2000 (*Auction Public Notice*) 65 FR 30598 (May 12, 2000). Therefore, if the Commission, in conjunction with other reconsideration issues now before it, determines that modifying the simultaneous multiple round auction design to allow combinatorial (''package'') bidding is feasible and appropriate for Auction No. 31, then the Bureau wants to be prepared to have a system and procedures in place to conduct package bidding. In this public notice, we seek comment on such procedures consistent with our authority under Part 1 of the Commission's rules. Depending on the Commission's actions and the comments we receive in response to this notice, we will, by a later public notice, either establish procedures as discussed here and use package bidding for

Auction No. 31, or use the procedures that we already announced. *See* Auction of Licenses in the 747–762 and 777–792 MHz Bands, Auction Notice and Filing Requirements for 12 Licenses in the 700 MHz Bands (*Auction No. 31 Procedures Public Notice*) 65 FR 12251 (March 8, 2000).

2. With package bidding, bidders would not be restricted to placing bids on individual licenses, but would also be allowed to place all-or-nothing bids on packages of licenses. This approach would allow bidders to better express the value of any synergies (benefits from combining complementary items) that may exist among licenses, and to avoid *exposure problems*—the risks bidders face in trying to acquire efficient packages of licenses. For example, with package bidding a bidder desiring an aggregation of all six 20 MHz licenses in order to inaugurate a nationwide service could bid on the six licenses as a package and not face the risk of winning only some of the desired licenses and paying more than the bidder values those licenses by themselves (without the other licenses needed to provide nationwide coverage).

3. Allowing package bidding does, however, potentially introduce what is termed the *threshold problem*—the difficulty that multiple bidders desiring only the single licenses (or smaller packages) that constitute a package may have in outbidding a single bidder that is bidding for the entire package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. Bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another piece of the larger package will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package. The procedures we propose to implement package bidding are designed to facilitate the emergence of bids that will overcome this problem.

4. In general, package bidding should be an improvement over our usual auction design when (a) there are strong complementarities among licenses for some bidders, and (b) the pattern of those complementarities is different for different bidders. Moreover, if some licenses are complements for some bidders and substitutes for other bidders, it might not be possible to achieve the most efficient assignments pricing each license individually, as under our usual simultaneous multiple round auction design. The comments we previously received suggest this is the case for Auction No. 31, where some potential bidders have expressed the importance of acquiring a nationwide footprint, and others the importance of acquiring all 30 MHz in a region. Therefore, it is appropriate to consider package bidding for this auction.

5. We therefore propose to modify the simultaneous multiple round auction design that we previously adopted for Auction No. 31 to allow for package bidding. Most of our auction rules and procedures would remain the same or be changed only slightly. For example, the Commission rules forbidding collusion among bidders would remain in full force. The procedures regarding upfront payments, initial maximum eligibility, and bid activity would be modified to account for the ability of bidders to bid on both individual licenses and packages and some of the other intricacies of package bidding design. We propose for Auction No. 31 that we would use a two-round stopping rule with no proactive activity rule waivers allowed, instead of the one-round stopping rule with proactive waivers that we previously adopted. We also seek comment on changes to the rules regarding default payments so that the default payment owed after default on a package would be calculated based on the difference between the defaulted bid on the package and the subsequent bid(s) on the package or the licenses that make up the package. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*New Rules NPRM*) 64 FR 36686 (July 7, 1999). Finally, we seek comment on some additional auction design issues, including a proposal that we permit bidders to use certain contingent bids known as ''or'' bids—for example, a bid of ''$10 for license A or $20 for license B.''

II. Auction Design and Procedures

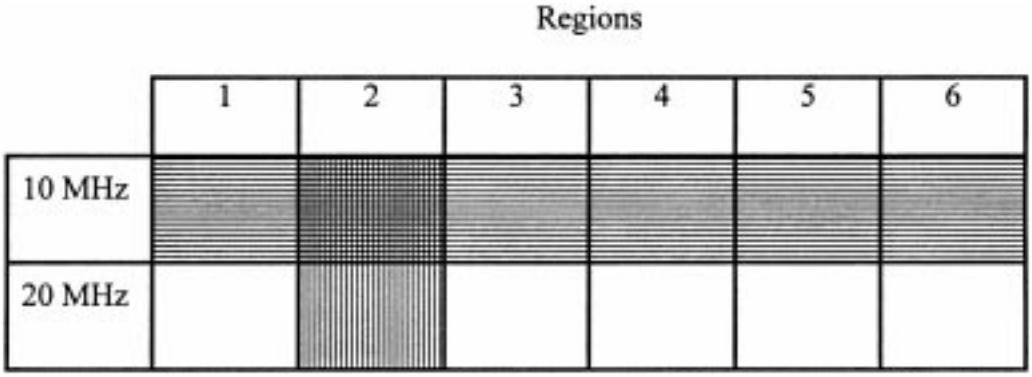
A. Simultaneous Multiple Round With Package Bidding

6. The simultaneous multiple round with package bidding auction design would be a modification of the simultaneous multiple round auction design that we previously established for Auction No. 31, and would be used instead of the simultaneous multiple round auction design. Bidders would still be able to submit bids on individual licenses, as in our existing simultaneous multiple round auction design, but could also submit all-or-nothing bids on packages of licenses.

Specifically, bidders could place bids on nine packages:

- One *global package*, of all licenses in the auction (*i.e.*, 30 MHz nationwide),
- Two *national packages*, of either all six 10 MHz licenses or all six 20 MHz licenses, and
- Six *regional packages*, of both the 10 MHz license and the 20 MHz license in a region.

We seek comment on this proposal. Furthermore, examples of these packages are illustrated in the following table. The global package consists of all twelve cells in the table. The two national packages are the two rows in the table. For example, the 10 MHz national package consists of all six 10 MHz licenses, as shown by the cells shaded with horizontal lines. The six regional packages are the six columns of the table. For example, the regional package for region two is shown by the cells shaded with vertical lines.



In addition, we seek comment on whether the Commission should allow all possible packages composed of the twelve individual licenses? Should only certain additional packages be allowed, and if so, which ones?

B. Winning and Retained Bids

7. Some additional definitions are required to discuss package bidding. *Winning bids* in a package bidding auction are the set of bids on individual licenses and packages that maximizes revenue when the auction closes, assigning each license to only one party (a bidder or, in the case of unsold licenses, the FCC). *Provisional winning bids* are the set of bids that maximize revenue in a particular round (they would win if the auction were to close in that round), assigning each license to only one party (a bidder or the FCC).

8. *Retained bids* are bids kept in the system from one round to the next. They are used in calculating bidders' bidding activity for purposes of the activity rule (discussed further in ''II.D. Activity Rules and Eligibility''). Retained bids include the provisional winning bids, plus bids that have the potential to become provisional winning bids because of changes in other bids in subsequent rounds. Assuming that bids in the auction may only rise, bids that could never be winning bids are not retained.

Specifically, we propose to ''retain'':

- A global package bid, if it is the provisional winner;
- A national package bid, if it would be part of the provisional winning set determined by limiting consideration to national packages and individual license bids, but excluding global and regional packages;
- A regional package bid, if it would be part of the provisional winning set, considering regional packages and individual license bids, but excluding global and national packages;
- An individual license bid, if it is the high bid for that license.

In other words, in a given round we would retain a bid (for the next round) if it is greater than the best combination of bids (new bids and bids retained from the previous round) that exactly cover the licenses in that bid.

9. For the purposes of determining retained bids, licenses on which no bids have been submitted would be treated as if the minimum opening bid had been submitted. The Commission will resolve tie bids on the basis of the order in which the Commission receives bids. Bidding credits would be treated the same as in a simultaneous multiple round auction, where the gross high bids on licenses determine the winning bids. Thus, retained bids and winning bids would be determined based on gross bids. We seek comment on this proposal.

C. Upfront Payments and Initial Maximum Eligibility

10. As we have stated, the Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. *See* Amendment of Part 1 of the Commission's Rules (*Part 1 Order, MO&O and NPRM*) 62 FR 13540 (March 21, 1997). Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. *See* Implementation of Section 309(j) of the Communications Act (*Competitive Bidding Second R&O*) 59 FR 22980 (May 4, 1994).

11. We propose no change in the upfront payments from those previously established for the individual licenses. For a package, we propose that we would calculate the bidding units and associated upfront payment by adding together the bidding units and associated upfront payments of the individual licenses that make up the package. We list the bidding units and upfront payments for all licenses in Attachment A. We seek comment on this proposal.

12. We also propose no change in our procedure for determining initial maximum eligibility from the procedure already established for Auction No. 31. Thus, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses or packages, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. The maximum eligibility will determine the licenses and packages on which a bidder may bid in each round of the auction. Thus, in calculating its upfront payment amount, an applicant must determine its *maximum* desired activity (*see* ''II.E. Activity Rules and Eligibility'') in any single round, and submit an upfront payment covering that number of bidding units.

13. Bidders might desire sufficient eligibility in order to afford themselves the flexibility to be active simultaneously on various packages and subsets thereof. If a bidder submitted an upfront payment for the total number of bidding units associated with all 12 licenses, the bidder would not, for example, have enough eligibility to be active simultaneously on a global package and other licenses. The bidder might want to do this, for example, if it held a retained bid on some individual licenses and then decided to bid for the global package. If, however, as proposed in ''II. E. Activity Rules and Eligibility,'' we modify the activity rule to account for mutually exclusive bids, bidders would never need to purchase more eligibility than the total bidding units associated with all licenses.

D. Minimum Accepted Bids and Bid Increments

14. We propose that for a bid to be accepted in any round it must be x% greater than the minimum amount to have become a retained bid in the previous round, where the Bureau will specify the value of x. In the case of an individual license bid the minimum accepted bid is analogous to that in a simultaneous multiple round auction. It must be x% greater than the highest bid for that license in previous rounds. We propose to set the minimum increment for a license or package initially at five percent. The Commission retains discretion to vary the minimum bid increments in each round of the auction by announcement prior to each round.

15. To simplify our procedures, we propose to treat minimum opening bids as retained bids after the first round of the auction. Thus, for example, after the first round a bid on an individual license with no initial bids would be required to exceed the minimum opening bid by x percent.

16. We also seek comment on other methods for calculating the minimum accepted bid. One possibility is to determine the bid increment as the maximum of (a) the increment as calculated above and (b) an increment based on the total revenue (the provisional winning bids) in the previous round. The total minimum bid increment would be allocated among individual licenses in proportion to their bidding units. That is, the *per bidding unit increment* would be determined as a percentage of the provisional winning total revenue times the share of total bidding units associated with the licenses contained in the bid.

17. For example, suppose the provisional winning total revenue in the previous round is $1,000 and percentage increment is 5%, so the total increment to be allocated among individual licenses is $50. A 20 MHz EAG license has 28 million bidding units, which is one-ninth of the total bidding units. Thus, under this approach the

increment on such a license would be $5.56, or the amount calculated in the previous paragraph, whichever is greater. One potential benefit of this approach is to help overcome the *threshold problem*—the difficulty smaller bidders face coordinating increases in bids on individual licenses or small packages to beat bids for larger packages of licenses—by moving up the prices more quickly for apparently undervalued properties.

18. Another possibility is to determine the minimum accepted bid by allocating the total amount needed to beat the provisional winners. Under this approach, each license is assigned a price so that the sum of the prices adds up to the provisional winning total revenue. Package prices are equal to the sum of the prices of the individual licenses in the package. The minimum acceptable bid would be a fixed percentage greater than the assigned price of the license or package.

19. As has become standard in our auctions, we also propose that we would use ''click box'' bidding. Specifically, for Auction No. 31 we would allow package bids to increase by one increment in each round, while bids on individual licenses could increase by one to nine increments. This limitation is designed to prevent bids on packages from rising too quickly for bidders on individual licenses to overcome the threshold problem. We seek comment on this proposal. Should we allow package bids to increase by greater than one increment in each round?

E. Activity Rules and Eligibility

20. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end of the auction to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver

21. In the context of package bidding, a bid would be considered ''active'' if it is either a retained bid from the previous round or is an accepted bid in the current round. Absent overlapping bids and ''or'' bids, a bidder's ''activity'' is the sum of the bidding units associated with the licenses on which the bidder is active. To account for the possibility of overlapping bids and ''or'' bids, which can not simultaneously be part of the winning set, we propose to measure a bidder's activity in a round as the *maximum* number of bidding units associated with bids that could simultaneously be in a provisional winning set. In other words, a bidder's activity in a round is the number of bidding units associated with the set of the bidder's retained bids from the previous round and the bidder's acceptable bids in the current round that maximizes the number bidding units without provisionally assigning the bidder any bids that cannot simultaneously be part of a provisional winning set. We seek comment on this proposal.

22. As we have already established for Auction No. 31 using the simultaneous multiple round auction design, we propose that no bidder's total activity in a given round may exceed its current eligibility. Initial eligibility is determined by upfront payments, as discussed in ''II. C. Upfront Payments and Initial Maximum Eligibility.'' In the context of package bidding for Auction No. 31, we propose that in each round of the auction a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 50 percent of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, we would reduce the bidder's eligibility for the next round to two times its activity in the current round. Thus, a bidder's eligibility in the current round is either twice its activity in the previous round or its eligibility in the previous round, whichever would be less:

$$\text{Eligibility}(t)=\text{Min}\,(\text{Eligibility}(t-1),\ 2*\text{Activity}(t-1))$$

We seek comment on this proposal and on variations. For example, should we instead adopt multiple stages with increasing activity requirements as we established for Auction No. 31 using a simultaneous multiple round auction design? We also seek comment on whether, for greater transparency and computational simplicity, the Bureau should limit the total number of bids made by any bidder, and, if so, what limits should be established.

F. Activity Rule Waivers and Reducing Eligibility

23. We propose to retain the procedures regarding activity rule waivers and reducing eligibility that we previously established for Auction No. 31 with one exception. As described, we propose not to allow bidders to submit proactive waivers.

24. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package. Activity rule waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

25. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (a) There are no activity rule waivers available; or (b) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. An automatic waiver invoked in a round in which there are no new acceptable bids will not keep the auction open.

26. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

27. We previously concluded that for Auction No. 31 using a simultaneous multiple round design, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. As described in ''H. Stopping Rule'', however, we are proposing to use a two-round simultaneous stopping rule for Auction No. 31 should we use package bidding. This means that all licenses remain open until the second consecutive round in which no new acceptable bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. With this stopping rule the auction could not close by surprise. Thus, we believe that bidders no longer need proactive activity rule waivers in order for the auction to reach an economically efficient outcome. Moreover, there is some concern that allowing proactive waivers when there is a two-round stopping rule might, in some circumstances, introduce opportunities for strategic behavior that may reduce the efficiency of the auction. Accordingly, we now propose not to allow bidders to submit proactive waivers in the context of package

bidding for Auction No. 31. We seek comment on this proposal.

28. We further propose that each bidder in Auction No. 31 be provided with five activity rule waivers (the same number we previously adopted) that may be used at the bidder's discretion during the course of the auction as set forth. We seek comment on this proposal.

G. Bid Removal and Bid Withdrawal

29. Should we implement package bidding for Auction No. 31, we propose to retain the bid removal procedures that we previously established. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. This is not the same as withdrawing a high bid, which, in our simultaneous multiple round auction system, can occur in rounds subsequent to the round in which the high bid was placed. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Once a round closes, a bidder may no longer remove a bid.

30. We propose to modify the bid withdrawal rules to not allow bidders to withdraw provisional winning bids from previous rounds if we use package bidding for Auction No. 31. Additionally, the previously announced special 30 MHz nationwide bid withdrawal procedure would no longer apply. Thus, bidders will be obligated for all bids they submit. If a bid is declared the winner and the bidder does not pay the amount due, it is liable for a default payment as set forth in the Commission's Rules. With the implementation of package bidding, bidders should not face exposure risks as they might in a simultaneous multiple round auction design. Bid withdrawal was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth little to them without the others they need to implement their business plan. Therefore, to the extent that bids are allowed on all packages of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. While there is no offsetting benefit, there is still the potential harm from allowing withdrawals. Withdrawals may be used strategically to provide incorrect price signals during the auction and lead other bidders to place inefficient bids. Also, when withdrawals are permitted, one can not ensure that the auction will proceed at an acceptable pace. Moreover, the harm associated with withdrawals is likely to be more severe in auctions with package bidding since a single withdrawal can affect the entire provisional winning set. We seek comment on this proposal.

H. Stopping Rule

31. Under a package bidding design, we propose to modify the stopping rule we previously adopted for Auction No. 31. Instead of a one-round simultaneous stopping rule with the use of proactive waivers, we now propose to employ a two-round simultaneous stopping rule approach. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new acceptable bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license. We seek comment on this proposal.

32. The Bureau also seeks comment on a modified version of the two-round simultaneous stopping rule for use if we implement package bidding. The modified two-round simultaneous stopping rule would close the auction for all licenses after the second consecutive round in which no bidder submits a new acceptable bid on any license on which it is not the provisional winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisional winning bidder would not keep the auction open under this modified rule.

33. As before, we propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids are submitted. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver. We also propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

I. Reserve Price or Minimum Opening Bid

34. We propose no change in the minimum opening bids from those we previously adopted for the individual licenses. For a package, we propose to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package. We list the proposed minimum opening bids for all licenses in Attachment A. We seek comment on this proposal.

35. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.,* because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures (*Part 1 Third Report and Order*) 63 FR 770 (January 7, 1998).

36. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

37. In light of the Balanced Budget Act, the Bureau decided to establish minimum opening bids for Auction No. 31. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. *See* Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices (*800 MHz Public Notice*) 62 FR 55251 (October 23, 1997). A minimum opening

bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

J. Round Structure

38. We propose no changes to the round structure and procedures from those we have already adopted for Auction No. 31. The Commission would use an automated auction system to conduct the package bidding auction format for Auction No. 31. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The package bidding format will consist of sequential bidding rounds, each followed by the release of round results. Multiple bidding rounds may be conducted in a single day. Details regarding the location and format of round results will be included in the same public notice.

39. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

K. Information Relating to Auction Delay, Suspension or Cancellation

40. We propose no change to the procedures regarding auction delay, suspension, or cancellation from those we have already adopted for Auction No. 31. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: Resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

L. Default

41. Under the Commission's Rules, if a bidder defaults, we may auction a new license for the spectrum. The defaulting bidder is also liable for a payment. Applying these rules to this auction, if a bidder defaults on a package bid, we would auction all of the licenses making up the package on which the party has defaulted. We would do this even if, under the combinatorial auction rules, a different set of packages would have won had the defaulting bidder not bid. For example, if the winning set of bids contains a 20 MHz nationwide package and a 10 MHz nationwide package, and the 20 MHz winner then defaults, we would auction only the six licenses making up the nationwide 20 MHz package. The 10 MHz package would be unaffected. We would take this approach even if, had the 20 MHz winner not submitted its winning bid, the winning set of licenses would not have been a nationwide 20 MHz package and a nationwide 10 MHz package but rather the six 30 MHz regional packages. We seek comment on this proposal.

42. To calculate the payment due upon default under package bidding, we seek comment on modifications to the default rules as follows. For defaulted package bids, payments will be calculated on a bid-by-bid basis, rather than on a license-by-license basis. The base payment due will be equal to the difference between the amount bid for the package and the amount of the subsequent winning bid for the same package or the aggregate of the subsequent winning bids for the licenses that make up the package. As is true for individual licenses, if a bidder defaults on two or more packages, the default payment due for each defaulted package will be calculated separately and will not be offset against one another. In other words, if one package is subsequently auctioned for more than the original package bid amount and the other package subsequently is auctioned for less, the excess bid price from the first package can not be used to reduce the amount owed on the second package. The additional payment will remain equal to three percent of the subsequent winning bid(s) or the defaulting bidder's bid, whichever is less. We seek comment on this proposed change to the Commission's rules.

Two examples will illustrate how this rule would work.

Example 1: A bidder wins the 10 MHz nationwide package with a bid of $500 million and defaults. The Commission offers the six licenses that make up the 10 MHz package at a new auction, where they are won with bids of $70 million, $70 million, $80 million, $80 million, $90 million and $90 million. The total amount received in the second auction is $480 million. The defaulting bidder is responsible for a total of $34.4 million consisting of $20 million (the difference between its original bid and the total of the subsequent winning bids) plus $14.4 million (3% of the subsequent winning bids).

Example 2: A bidder wins two regional packages with bids of $250 million each and defaults. The Commission offers the four licenses that make up the two regional packages at a new auction, where they are again won as packages at bids of $200 million and $300 million, respectively. The defaulting bidder is responsible for separate default payments for each package. For the first package, the payment equals a total of $56 million consisting of $50 million (the original $250 million bid less the subsequent winning bid of $200 million) plus $6 million (3% of the subsequent winning bid). For the second package, the subsequent winning bid is higher than the defaulting bidder's original bid and therefore there is no shortfall; the default payment equals only $7.5 million (3% of the original bid). In total, the defaulting bidder owes a payment equal to $63.5 million ($56 million for the first package plus $7.5 million for the second package).

III. Additional Auction Design Considerations

A. "Or" Bids

43. We propose the use of "or" bids that would allow bidders to specify that they wish to win one bid or the other, but not both, if we implement package bidding. Such bids could provide a bidder greater flexibility to aggressively bid on licenses that it considers substitutes. For example, suppose a bidder wants a license for one region and only one region. Without "or" bids a bidder with a retained but non-provisional winning bid on a license might be reluctant to start bidding on another license that it considers a good substitute because it could end up winning both. Allowing "or" bids would overcome this problem.

44. For computational simplicity and transparency, we propose (a) to allow only pairs of bids to be linked by the "or" function or operator and (b) not to allow links between national and regional packages. For example, we would allow bidders to use the "or" function between the 10 MHz nationwide package and the 20 MHz nationwide package, but not between the 10 MHz nationwide package and a 30 MHz region. We would also allow bidders to use the "or" function to link to their retained bids as long as the retained bids are not part of the provisional winning set.

45. In order to implement ''or'' bids, we would need to modify the method by which we determine retained bids. Rather than using the method described in ''II.B. Definitions: Winning and Retained Bids,'' we would determine retained bids as follows:

- Retain a global package bid if it is the provisional winner. Do not retain attached ''or'' bids.
- Retain a national package bid if it would be part of the provisional winning set including national packages and individual license bids, but excluding global and regional packages. Do not retain attached ''or'' bids.
- Retain a regional package bid if it would be part of the provisional winning set including regional packages and individual license bids, but excluding global and national packages. Do not retain attached ''or'' bids.
- Retain individual license bids if it would be part of the provisional winning set including individual license bids, but excluding global, national and regional package bids. Do not retain attached ''or'' bids.

We seek comment on this proposal, including whether the number of ''or'' bids per bidder be limited.

B. Bid Cancellation

46. Another method that could overcome the reluctance of bidders that have retained but non-provisional winning bids from bidding on other licenses that they consider substitutes is to allow bidders to *cancel* their bids. If we adopted such a procedure, bidders would be permitted to cancel only non-provisional winning retained bids; provisional winning bids could not be cancelled. Allowing non-provisional winning retained bid cancellation could avoid the possible complexity of ''or'' bids and provide bidders more flexibility to pursue backup strategies—and to explore ways to beat package bids. However, it also could facilitate adverse strategic bidding, similar to that associated with allowing withdrawal of provisional winning bids. Allowing cancellation of retained but non-provisional winning bids could also make it *more* difficult for bidders for single licenses or smaller packages to beat package bids. Moreover, if bidders were permitted to freely cancel non-provisional winning retained bids, the total of retained bids would not necessarily always increase during the auction and we might be unable to ensure an acceptable pace of the auction. We therefore tentatively conclude not to permit bidders to cancel bids. We seek comment, however, on this.

47. If we permitted cancellation of non-provisional winning bids, we would also likely adopt the option of retaining all bids. The possibility that bids may be cancelled means that many, or all, bids are potentially part of a winning set of bids, and thus it may be appropriate to retain all bids. Rather than the auction system canceling non-provisional winning bids automatically, bidders would be required to cancel those bids. If we were to adopt this approach, it would also be necessary to modify the activity rules and the procedures for calculating minimum acceptable bids. The currently proposed activity rule could provide inadequate incentives to move the auction along if the same activity credit were given to all bids regardless of their likelihood of winning. We seek comment on this proposal.

C. Bid Composition Restriction

48. We seek comment on bid composition restrictions. For example, the Milgrom-McAfee bid composition restriction would not allow a bidder that is active in a round on a package, but not on a subset of that package, to bid subsequently for the subset. Such a restriction could help mitigate the *threshold problem.* It would tend to deter bidders that are interested in multiple license but do not have strong synergies from strategically making package bids to create a threshold problem for bidders interested in subsets of the package. Such a rule would, however, somewhat limit bidders' flexibility. We seek comment on this device and similar restrictions.

IV. Conclusion

49. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–13993 Filed 6–2–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 19, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John L. Franklin, Sidney, Montana; to acquire voting shares of 1st United Bancorporation, Inc., Sidney, Montana, and thereby indirectly acquire voting shares of 1st Bank, Sidney, Montana.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13899 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 June 29, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Mahaska Investment Company ESOP, Oskaloosa, Iowa; to acquire an additional 2.29 percent, for a total of 13.87 percent in aggregate, of the voting shares of Mahaska Investment Company, Oskaloosa, Iowa, and thereby indirectly acquire additional voting shares of Mahaska State Bank, Oskaloosa, Iowa; Pella State Bank, Pella, Iowa; Central Valley Bank, Ottumwa, Iowa; and Midwest Federal Savings & Loan of Eastern Iowa, Burlington, Iowa.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. F & M Financial Services, Inc., Preston, Minnesota; to acquire 100 percent of the voting shares of F & M Community Bank, N. A., Chatfield, Minnesota, a de novo bank.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. JTB Bancshares, Inc., Mission Hills, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Whiting Bankshares, Inc., Whiting, Kansas, and thereby indirectly acquire The State Bank of Whiting, Whiting, Kansas.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13900 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Community Bancshares, Inc., Bargersville, Indiana; to acquire Blue River Federal Savings Bank, Edinburgh, Indiana, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received not later than June 29, 2000.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Admiral Family Banks, Inc., Alsip, Illinois; to engage *de novo* in leasing activities, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13898 Filed 6–2–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981 0108]

Service Corporation International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Harold Kirtz or Andrea Foster, Federal Trade Commission, Southeast Region, Suite 5M35, Midrise Bldg., 60 Forsyth St., S.W., Atlanta, GA 30303. (404) 656–1357.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34) notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 18, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW,

Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 6000 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement for public comment from Service Corporation International (''SCI'') designed to remedy the anticompetitive effects arising from SCI's 1994 acquisition of the LaGrone Funeral Home (''LaGrone'') in Roswell, New Mexico. SCI, headquartered in Houston, Texas, is the nation's largest chain of funeral homes and cemeteries. LaGrone, at the time of the acquisition, operated two funeral homes in New Mexico.

At the time of the acquisition, there were only two funeral homes operating in Roswell, New Mexico. SCI owned the Ballard Funeral Home. LaGrone owned the remaining funeral home. The acquisition gave SCI a monopoly in the provision of funeral services in Roswell. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Since the acquisition, no new entry into the provision of funeral services in Roswell has occurred. After the acquisition, prices for funeral services increased in Roswell.

On September 28, 1999, prompted by the Commission's investigation of the LaGrone acquisition, SCI sold the Ballard Funeral Home to Sentry Group Services, Inc. (''Sentry''). Sentry, a privately-held company, owns and operates 37 funeral homes in Oklahoma, Texas, New Mexico, Kansas, and Colorado. Provident Services, Inc. (''Provident''), SCI's financial subsidiary, provided financing for Sentry's acquisition.[1]

To ensure that competition is fully restored in Roswell, the Commission's proposed Consent Order requires that, if SCI acquires the Ballard Funeral Home pursuant to a default on Sentry's loan with Provident, SCI must divest Ballard to a Commission-approved buyer within 90 days. In the event SCI does not accomplish the divestiture within 90 days, the proposed Consent Order provides that the Commission may appoint a trustee to divest Ballard. Moreover, the proposed Consent Order prohibits Provident from sharing information obtained from Sentry with SCI.

The proposed Consent Order also provides that, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home serving Chaves County, New Mexico, where Roswell is located.

The proposed Consent Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–13963 Filed 6–2–00; 8:45 am]

BILLING CODE 6750–01–U

[1] Provident is kept separate and distinct from the operating divisions of SCI. Because there are unique financing needs in the funeral industry, Provident provides loan services for many transactions, including the construction or acquisition of funeral homes by a number of SCI's competitors. Consequently, Provident's loan agreement includes a provision guaranteeing the confidentiality of information provided to Provident by a borrowing funeral home operator.

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, June 19, 2000, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 20, 2000, from 8:30 a.m. to 11:00 a.m., in room 7C13 of the General Accounting Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact government auditing standards. Any interested person may attend the meeting as an observer. Council discussions and reviews are open to the public.

For further information contact: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 00–13897 Filed 6–2–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 00119]

Core State Injury Surveillance and Program Development Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Core State Injury Surveillance Program Development and Traumatic Brain Injury Surveillance Program Development, focused in three phases: Phase I-Basic Core Injury Program Development; Phase II-Enhanced Core Injury Program Development; and Phase III-Advanced Core Injury Program Development: Surveillance. This Program addresses the health promotion and disease prevention objectives of ''Healthy People 2010.'' The announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of ''Healthy People 2010,'' visit the Internet site: http://www.health.gov/healthypeople.

The purposes of the cooperative agreements are to develop, implement and evaluate injury core and/or surveillance programs in one of the specified injury-related priority areas.

B. Eligible Applicants

Assistance will be provided only to the official public health departments of States or their bonafide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the

Marshall Islands, the Republic of Palau and federally recognized Indian tribal governments. States may apply for Phases I or II, Phases II and III, or Phase III only. States should submit a separate application for each Phase applied for. States previously funded under Announcement number 780 ''State and Injury Intervention Surveillance Program'', Part II, Basic Injury Program Development (Georgia, Kansas, Mississippi, and Oregon), are eligible to apply under Phases II and III; States previously funded under Announcement number 99136, ''State-Based Core Injury Program Development'' (Arkansas, Vermont and Nevada), are eligible to apply under Phase III.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement) contract, loan, or any other form.

C. Availability of Funds

Approximately $1,900,000 is available in FY 2000 to fund approximately 24 awards.

Phase I: Basic Core Injury Program Development.

Approximately $750,000 is available to fund 4–10 States for Core Injury Program Development. The average award amount will be $75,000.

Phase II: Enhanced Core Injury Program Development.

Approximately $750,000 is available to fund up to 16 States for Core Injury Program Development. The average award amount will be $75,000.

Phase III: Advanced Injury Surveillance Program Development: Surveillance.

Approximately $400,000 is available to fund up to 4 States for Injury Surveillance Program Development. The average award amount will be $100,000.

It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 4 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and on the availability of funds.

Pre-Application Workshop for New and Competing Applicants:

In addition, for interested applicants, a telephone conference call for pre-application technical assistance will be held on Friday, June 9, 2000, from 1 pm to 2 pm, Eastern Standard Time. The conference name is NCIPC Core Injury, the bridge number for the conference call is 1–800–311–3437, and the pass code is 957144. If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions, about the technical operations of the teleconference equipment please call 404–639–7550.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1(Recipient Activities)and CDC will be responsible for the activities listed under 2(CDC Activities).

1. Recipient Activities

Phase I: Basic Core Injury Program Development

a. Establish an injury focal point and coordinating process within the public health agency;

b. Establish an injury advisory council to address issues relevant to injury prevention and control in the State;

c. Conduct data review and analysis to determine the availability of data about injury problems and the potential for solutions in the State and region in comparison to the nation and develop an annotated report containing this information;

d. Identify and catalog current and potential injury prevention and control resources within the State; and

e. Develop a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serves as a resource for other State agencies.

Phase II: Enhanced Core Injury Program Development

In addition to the activities indicated for Phase I, above, applicant will also:

a. Analyze existing data to define the magnitude of the injury problem in the State, the populations at risk, and the causes of injury;

b. Use the 11 recommended core data sets to produce and disseminate written reports on injuries within the State and conduct national comparisons (To obtain a copy of Consensus recommendations, see Where to Obtain Additional Information, Section J);

c. Evaluate data to determine whether data sources can be linked and whether there is any benefit for prevention from linking them;

d. Develop or update a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serve as a resource for other State agencies;

e. Develop, update, or expand an injury advisory council to provide input on issues relevant to injury prevention and control in the State; and

f. Provide coordination for injury activities of the public health agency.

g. Participate in a process for establishing and reviewing some components (*e.g.,* data collection and analysis; coordination and collaboration; and technical support and training) of the 5 minimum components used to define a Core Injury Program and share with other States, ''lessons learned'' about and through this process.

Phase III Advanced Core Injury Program Development: Surveillance

a. Develop and enhance capacity for accessing data sets included among the 11 core data sets recommended for injury surveillance;

b. Develop or enhance capacity to conduct injury surveillance for conditions included among the 14 core injuries and injury risk factors recommended for surveillance to include but not be limited to Traumatic Brain Injury (TBI) data; and

c. Analyze and interpret TBI and other surveillance data to support statewide TBI and other injury prevention and control activities, make comparisons with other States and produce and disseminate written reports using 3 or more of the recommended core data sets for injury control. (States funded under Announcement numbers 716 and 98022, while funded under these announcements, will be required to focus on a core factor other than TBI).

2. CDC Activities

a. Provide consultation on planning, implementation, evaluation, data analysis, and dissemination of results;

b. Provide coordination between and among the States, by assisting in the transfer of information and methods developed to other programs, and providing up-to-date information;

c. Provide technical assistance for the Behavioral Risk Factor Surveillance System (BRFSS) and other available specific injury surveillance modules when requested;

d. Operate a process of evaluation and improvement in which lessons learned are shared among other States implementing the same type of program; and

e. Coordinate compilation of ''lessons learned'' through this process and communicate them.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Subject to the limitations described under Eligible Applicants, Section B above, States may

choose to apply for Phases I or II, Phases II and III, or Phase III. A separate application should be submitted for each Phase (I, II, and III) applied for. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 30 double-spaced pages for each Phase applied for, printed on one side, with one inch margins, no smaller than 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 100 pages including the appendix. No bound booklets, etc. should be attached.

Competing continuation applicants funded under Program Announcement 780, State and Injury Intervention Surveillance Program, Part II, Basic Injury Program Development, should provide a Progress Report which includes a detailed report on the attainment of objectives and achievements of the program over the preceding three-year period of CDC funding. The applicant should include the accomplishments made with CDC funding covering all areas related to that cooperative agreement. The section should not exceed 5 pages.

F. Submission and Deadline

Letter of Intent (LOI): Prospective applicants are asked to submit, by June 30, 2000, a letter of intent that includes the number and title of the announcement, a descriptive title of the proposed program, the name, address, and telephone number of the Principal Investigator and whether applying for Phase I, Phase II or Phase III funding.

Although a letter of intent is not required, is not binding, and is not used in the review of an application, the information that it contains is used to estimate the potential review workload and avoid conflict of interest in the review. The letter of intent is to be submitted to the Grants Management Specialist listed under the ''Where to Obtain Additional Information'' section of this announcement.

Application: Submit the original and 2 copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 8, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

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 submission to the independent review group. (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.)

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 application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Need for Core Program Development (30 Points)

For Phase I Applicants:

The extent to which the applicant describes the need for Core Program funding and the minimal nature of their injury program.

The extent to which the applicant describes the level of agency resources directed toward injury activities, if applicable, and how this additional funding will contribute to efforts to initiate or improve existing or planned injury surveillance activities.

The extent to which the applicant defines the agency's commitment to coordinating injury prevention and control activities through a focal point.

For Phase II Applicants:

The extent to which the applicant describes an existing injury program which continually maintains capacity to conduct injury activities.

For competing continuation applicants—those currently funded under Program Announcement 780, State and Injury Intervention Surveillance Program, Part II, Basic Injury Program Development, the extent to which past activities are presented completely and demonstrate attainment of objectives.

For Phase III Applicants:

The extent to which the applicant presents information describing the nature of an existing injury surveillance program.

The extent to which the applicant presents data and information documenting the agency's capacity and current resources allocated for injury surveillance.

The extent to which the applicant provides evidence of an effective plan for enhancements to its injury surveillance system, which includes the ability to access or link data on some of the 14 core conditions including traumatic brain injury (TBI) in some of the 11 core data sets recommended for injury surveillance.

2. Goals and Objectives (10 Points)

For All Phases:

The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable.

The extent to which the applicant has included objectives which are feasible to accomplish during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

The extent to which the objectives are specific, time-framed, measurable, and realistic.

3. Methods and Staffing (30 Points)

For All Phases:

The extent to which the applicant provides: (1) A detailed description of how staffing resources (including epidemiological resources) will be allocated and used to accomplish each objective and overall program goals, and which includes designation of a coordinator with responsibility for coordinating an injury prevention and control program; (2) indicates a reasonable and complete schedule for implementing and completing all activities; and (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment (*e.g.*, time, in-kind, financial) of staff, organizations, and agencies involved in injury surveillance activities and; (4) provides evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities and providing technical advice and consultation for other State agencies.

4. Evaluation (20 Points)

For All Phases:

The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions and continuous program improvement is present.

5. Collaboration (10 Points)

For All Phases:

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions.

The extent to which advisory group membership and roles are clear and appropriate.

The extent to which relationships with local academic institutions are completely described and appropriate.

The extent to which surveillance, if any, of core injury conditions will be developed and coordinated to enable comparability of TBI and other injury data with other States and jurisdictions.

6. Budget and Justification (Not Scored)

For All Phases:

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus 2 copies of:

1. Semi-annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application package:

AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317k(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended.

J. Where To Obtain Additional Information

This and other CDC announcements are available through the CDC homepage on the Internet at: http://www.cdc.gov. 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 questions after reviewing the contents of all the documents, business management assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Announcement #00119, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2717, Email address jcw6@cdc.gov

For program technical assistance, contact: Cecil Threat, Jr., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K02, Atlanta, GA 30341–3724, Telephone (770) 488–1236, Email address: ctt3@cdc.gov.

To obtain a copy of The Consensus Recommendations for Injury Surveillance in State Health Departments, September 1999, contact STIPDA at 2141 Kingston Ct., Ste. 110–B, Marietta, GA 30067, 770–690–9000. You can also view and print this document from the STIPDA webpage: www.stipda.org (From the STIPDA homepage, click-on the Publications link; scroll down and select the publication indicated above.)

Dated: May 30, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13938 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Academic Centers of Excellence on Youth Violence, PA# 00043

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: National Academic Centers of Excellence on Youth Violence, PA# 00043.

Times and Dates: 8 a.m.–8:45 a.m. July 10, 2000 (Open); 8:45 a.m.–5:30 p.m. July 10, 2000 (Closed); 8 a.m.–5:30 p.m. July 11, 2000 (Closed).

Place: Crowne Plaza Hotel, Atlanta Airport Virginia Avenue, Atlanta, Georgia 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00043.

CONTACT PERSON FOR MORE INFORMATION: Enrique Nieves, Jr., M.S. Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Division of Violence Prevention, 2939 Flowers Road, Vanderbilt Building, Room 2012, m/s K60, Atlanta, GA 30341. Telephone 770/488–1281, email exn2@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13939 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, RFA–OH–00–004

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Incidence of Needlestick and Sharps Injuries and Medical Safety Device Availability/Use Among Non-Hospital Health Care Workers, RFA–OH–00–004.

Times and Date: 8 a.m.–8:30 a.m., July 25, 2000 (Open); 8:30 a.m.–4:30 p.m., July 25, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–004

Contact Person for More Information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–2383, e-mail spc3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13940 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Effects of Mixed Dusts on Pulmonary Inflammation, Airway Reactivity and Susceptibility to Pulmonary Infection, RFA# OH–00–009

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Effects of Mixed Dusts on Pulmonary Inflammation, Airway Reactivity and Susceptibility to Pulmonary Infection, RFA# OH–00–009.

Times and Date: 8 a.m.–8:30 a.m., July 26, 2000 (Open); 8:30 a.m.–5 p.m., July 26, 2000 (Closed).

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to RFA–OH–00–009.

Contact Person for More Information: Michael J. Galvin, Jr., Ph.D., Health Science Administrator, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, 1600 Clifton Road, NE., m/s D30 Atlanta, Georgia 30333. Telephone 404/639–3525, e-mail mtg3@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 00–13941 Filed 6–2–00; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1283]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products

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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reporting and recordkeeping, general and specific requirements, and the availability of sample electronic products for manufacturers and distributors of electronic products.

DATES: Submit written comments on the collection of information by August 4, 2000.

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: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

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 set forth in this document.

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.

Reporting and Recordkeeping Requirements and Availability of Sample Electronic Products for Manufacturers and Distributors of Electronic Products; 21 CFR Parts 1002, 1010, 1020, 1030, 1040, and 1050; FDA Forms 2579, 2767, 2877, and 3147 (OMB Control No. 0910–0025)—Extension

Under sections 532 through 542 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ii through ss), FDA has the responsibility to protect the public from unnecessary exposure from radiation from electronic products. The regulations issued under these authorities are listed in the Code of Federal Regulations, title 21, chapter I, subchapter J. Specifically, subchapter A regulations, 21 CFR 5.10(a)(3), 5.25(b), 5.35(a)(1), and 5.86 through 5.92, delegate administrative authorities to FDA.

Section 532 of the act directs the Secretary of the Department of Health and Human Services (the Secretary) to establish and carry out an electronic product radiation control program, including the development, issuance, and administration of performance standards to control the emission of electronic product radiation from electronic products. The program is designed to protect the public health and safety from electronic radiation, and the act authorizes the Secretary to procure (by negotiation or otherwise) electronic products for research and testing purposes and to sell or otherwise dispose of such products.

Section 534(g) of the act directs the Secretary to review and evaluate industry testing programs on a continuing basis; and section 535(e) and (f) of the act directs the Secretary to immediately notify manufacturers of, and ensure correction of, radiation defects or noncompliances with performance standards.

Section 537(b) of the act contains the authority to establish and maintain records (including testing records), make reports, and provide information to determine whether the manufacturer has acted in compliance.

Parts 1002 through 1010 (21 CFR parts 1002 through 1010) specify reports to be provided by manufacturers and distributors to FDA and records to be maintained in the event of an investigation of a safety concern or a product recall.

FDA conducts laboratory compliance testing of products covered by regulations for product standards in parts 1020, 1030, 1040, and 1050 (21 CFR parts 1020, 1030, 1040, and 1050). FDA details product-specific performance standards that specify information to be supplied with the product or require specific reports. The information collections are either specifically called for in the act or were developed to aid the agency in performing its obligations under the act. The data reported to FDA and the records maintained are used by FDA and the industry to make decisions and take actions that protect the public from radiation hazards presented by electronic products. This information refers to the identification of, location of, operational characteristics of, quality assurance programs for, and problem identification and correction of electronic products. The data provided to users and others are intended to encourage actions to reduce or eliminate radiation exposures.

FDA uses the following forms to aid respondents in the submission of information for this information collection: (1) Form FDA 2767, ''Notice of Availability of Sample Electronic Product,'' (2) Form FDA 2877, ''Declaration for Imported Electronic Products Subject to Radiation Control Standards,'' and (3) Form FDA 3147, ''Application for a Variance From 21 CFR 1040.11(c) for a Laser Light Show, Display, or Device.''

The most likely respondents to this information collection will be electronic product and x-ray manufacturers, importers, and assemblers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents;	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1002.3		10	1	10	12	120
1002.10 and 1010.3		540	1.6	850	24	20,400
1002.11		1,000	1.5	1,500	0.5	750
1002.12		150	1	150	5	750
1002.13 (Annual)		900	1	900	26	23,400
1002.13 (Quarterly)		250	2.4	600	0.5	300
1002.20		40	1	40	2	80
1002.50(a) and 1002.51		10	1.5	15	1	15
	FDA 2877	600	32	19,200	0.2	3,840
1010.2		1	1	1	5	5
1010.4(b)		1	1	1	120	120
1010.5 and 1010.13		3	1	3	22	66
	FDA 2767	145	11.03	1,600	0.09	144
1020.20(c)(4)		1	1	1	1	1
1020.30(d), (d)(1), and (d)(2)	FDA 2579	2,345	8.96	21,000	0.30	6,300
1020.30(g)		200	1.33	265	35	9,275

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form No.	No. of Respondents;	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1020.30(h)(1) through (h)(4) and 1020.32(a)(1) and (g)		200	1.33	265	35	9,275
1020.32(g) and 1020.33(c), (d), (g)(4), (j)(1), and (j)(2)		9	1	9	40	360
1020.40(c)(9)(i) and (c)(9)(ii)		8	1	8	40	320
1030.10(c)(4)		41	1.61	66	20	1,320
1030.10(c)(5)(i) through (c)(5)(iv)		41	1.61	66	20	1,320
1030.10(c)(6)(iii) and (c)(6)(iv)		1	1	1	1	1
1040.10(a)(3)(i)		83	1	83	3	249
1040.10(h)(1)(i) through (h)(1)(vi)		805	1	805	8	6,440
1040.10(h)(2)(i) and (h)(2)(ii)		100	1	100	8	800
1040.11(a)(2)		190	1	190	10	1,900
1040.11(c)	FDA 3147	53	2.2	115	0.5	58
1040.20(d), (e)(1), and (e)(2)		110	1	110	10	1,100
1040.30(c)(1)		1	1	1	1	1
1040.30(c)(2)		7	1	7	1	7
1050.10(f)(1) through (f)(2)(iii)		10	1	10	56	560
Total						89,278

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1002.30 and 1002.31(a)	1,150	1,655.5	1,903,825	198.7	228,505
1002.40 and 1002.41	2,950	49.2	145,140	2.4	7,080
1020.30(g)(2)	22	1	22	0.5	11
1040.10(a)(3)(ii)	83	1	83	1.0	83
Total					235,679

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates were derived by consultation with FDA and industry personnel and actual data collected from industry over the past 3 years. An evaluation of the type and scope of information requested was also used to derive some time estimates. For example, disclosure information primarily requires time only to update and maintain existing manuals. Initial development of manuals has been performed except for new firms entering the industry. When information is generally provided to users, assemblers, or dealers in the same manual, they have been grouped together in the ''Estimated Annual Reporting Burden'' table.

The following information collection requirements are not subject to review by OMB because they do not constitute a ''collection of information'' under the PRA: Sections 1002.31(c); 1003.10(a), (b), and (c); 1003.11(a)(3) and (b); 1003.20(a) through (h); 1003.21(a) through (d); 1003.22(a) and (b); 1003.30(a) and (b); 1003.31(a) and (b); 1004.2(a) through (i); 1004.3(a) through (i); 1004.4(a) through (h); and 1005.21(a) through (c). These requirements ''apply to the collection of information during the conduct of general investigations or audits'' (5 CFR 1320.4(b)). The following labeling requirements are also not subject to review under the PRA because they are a public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public (5 CFR 1320.3(c)(2)): Sections 1020.10(c)(4), 1030.10(c)(6), 1040.10(g), 1040.30(c)(1), and 1050.10(d)(1).

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13892 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0529]

Agency Information Collection Activities; Announcement of OMB Approval; Changes to an Approved NDA or ANDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Changes to an Approved NDA or ANDA'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 2000 (65 FR 779), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0431. The approval expires on February 28, 2001. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13891 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0725]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate—(OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP). The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, ''Interstate Shellfish Dealer's Certificate.'' FDA uses this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

In the **Federal Register** of March 7, 2000 (65 FR 12013), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Form No.	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
FDA 3038	35	58	2,036	.10	204

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number of certificates received in 1999.

Dated: May 26, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–13890 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2552–96]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital and Health Care Complex Cost Report and supporting Regulations in 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2552–96 (OMB 0938–0050); *Use:* Form HCFA–2552–96 is the form used by hospitals participating in the Medicare program. This form reports the health care costs used to determine the amount of services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours:* 4,629,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13981 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0294]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the Proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Hospital Condition of Participation; Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data and Supporting Regulations at 42 CFR 482.45; *Form No.:* HCFA–R–0294 (OMB# 0938-NEW); *Use:* Hospitals must document that they have protocols for referral of organ, tissue, and eye donors and that they have contacted the organ procurement organization and (in some cases) the tissue bank and/or eye bank about every death or imminent death so that surveyors can verify that the hospital is in compliance with the Medicare/Medicaid conditions of participation for hospitals; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,100; *Total Annual Responses:* 1,491,700; *Total Annual Hours:* 146,070.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13982 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1728–94]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24, and 413.106; *Form No.:* HCFA–1728–94 (OMB 0938–0022); *Use:* Form HCFA–1728–94 is the form used by HHAs participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Businesses or other for-profit; Not-for-profit institutions institutions; *Number of Respondents:* 8,950; *Total Annual Responses:* 8,950; *Total Annual Hours:* 1,599,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13985 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–3070]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons with Related Conditions ICF/MR Survey Report Form (3070G–I) and Supporting Regulations at 42 CFR 431.52, 431.151, 435.1009, 440.150, 440.220, 442.1, 442.10–442.16, 442 .30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, and 498.3–498.5; *Form No.:* HCFA–3070 (0938–0062); *Use:* The survey forms are needed to ensure provider compliance. In order to participate in the Medicaid program as an ICF/MR, a providers must meet Federal standards. The survey report form is used to record providers' level of compliance with the individual standard and report it to the Federal government; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,763; *Total Annual Responses:* 6,763; *Total Annual Hours:* 21,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 25, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13986 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0211]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program, and Model Application Template and Instructions; *Form No.:* HCFA–R–211 (OMB #0938–0707); *Use:* States are required to submit Title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. The model application Template is used to assist States in submitting a State Child Health Plan and amendments to that plan; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 2,960.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13983 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1514]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA–1514 (OMB #0938–0380); *Use:* Section 1861 of the Social Security Act requires hospitals and critical access hospitals to be certified to participate in the Medicare/Medicaid program. These providers must complete the ''Hospital Request for Certification in the Medicare/Medicaid Program'' form in order to be certified or recertified; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,300; *Total Annual Responses:* 2,000; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–13984 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1137–N]

Medicare Program; Announcement of a Series of National and Regional Training Sessions To Provide Training to Medicare+Choice Organizations and Others Concerning Data Requirements, and the Timely and Accurate Submission of Physician and Hospital Outpatient Encounter Data To Support a Comprehensive Risk Adjustment Model.

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces a series of national and regional training sessions to provide Medicare+Choice organizations, providers, practitioners, and others with appropriate technical training to enable them to submit timely and accurate physician and hospital outpatient encounter data. The national training sessions will address the following topics:

- Data requirements and edits for physician encounter data.
- Data requirements and edits for hospital outpatient encounter data.

Overview of Comprehensive Risk Adjustment models and timeline. Review of workflow associated with encounter data transactions. Communications and connectivity to the Palmetto Data Network and the Encounter Data Front-End Edits system.

- Tracking status and disposition of encounter data submissions.
- Review of training events and customer support services. The regional meetings will deal with the specific requirements for submission of physician encounter data and hospital outpatient encounter data.

NATIONAL TRAINING DATES: The Physician National Training session is scheduled for June 19, 2000 from 9 a.m. until 4 p.m., Eastern Time. The Hospital Outpatient National Training session is scheduled for September 15, 2000 from 9 a.m. until 4 p.m., Eastern Time.

NATIONAL ADDRESSES: The National meetings on June 19, 2000 and September 15, 2000 will be held in the HCFA Auditorium, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

REGIONAL TRAINING DATES AND CITIES: The Physician Regional Training sessions will be held as follows:

Physician Encounter Data Training Schedule 2000

Date and Location

June 29–30, 2000:
BOSTON, MA—Sheraton Boston Hotel, 39 Dalton Street, Boston, MA 02199, (617) 236–2000

July 6–7, 2000:
SAN FRANCISCO, CA—Hotel Nikko, 222 Mason Street, San Francisco, CA 94102, (415) 394–1111

July 11–12, 2000:
CHICAGO, IL—The Drake Hotel, 140 East Walton Place, Chicago, IL 60611, (312) 787–2200

July 17–18, 2000:
ATLANTA, GA—Hyatt Regency, 265 Peachtree Street, NE, Atlanta, GA 30303, (404) 577–1234

The Hospital Outpatient Regional Training sessions will be held as follows:

Hospital Outpatient Encounter Data Training Schedule 2000

Date and Location

September 18–19, 2000:
SAN FRANCISCO, CA—San Francisco Airport, Marriott 1800 Old Bayshore Highway, Burlingame, CA 94010, (650) 692–9100

September 21–22, 2000:
ATLANTA, GA—Wyndham Atlanta, 160 Spring Street, Atlanta, GA 30303, (404) 688–8600

October 16–17, 2000:
CHICAGO, IL—Westin O'Hare, 6100 River Road, Rosemont, IL 60018, (847) 698–6000

October 19–20, 2000:
BOSTON, MA—Boston Park Plaza Hotel, 64 Arlington Street, Boston, MA 02116, (617) 426–2000

FOR FURTHER INFORMATION CONTACT: Encounter Data Representative at (301) 519–6700 or e-mail us with your questions at encounterdata@aspensys.com. Please refer to the HCFA Advisory Committees Information Lines 1(877) 449–5659 toll free or (410) 786–9379 local or via the Internet at hhtp:www.hcfa.gov/fac for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

Background

The Balanced Budget Act of 1997 (BBA) (Public Law 105–33) established the Medicare+Choice program. Under the BBA, we must implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payment to Medicare+Choice organizations (M+COs). Risk adjustment implementation began January 1, 2000.

The BBA also gives us the authority to collect inpatient hospital data for discharges on or after July 1, 1997, and additional data for services occurring on or after July 1, 1998. Pending OMB approval, M+COs must submit physician and hospital outpatient encounter data on the following schedule:

- October 1, 2000: Submission of physician encounters begins.
- January 1, 2001: Submission of hospital outpatient encounters begin with dates of services retroactive to October 1, 2000.

This notice announces these training sessions to provide an opportunity for M+COs, providers, practitioners, and others to obtain information on the requirements for the collection of physician and hospital outpatient encounter data. These training sessions will also provide additional information on our data collection efforts, systems processes, training approach, and customer service support. Subsequent to these sessions we will implement user groups to facilitate ongoing discussions and training support. We are announcing these training sessions to provide physician and hospital outpatient data requirements and to allow individuals and organizations familiar with issues related to physician and hospital outpatient data collection to raise questions that can be answered in these and subsequent training sessions. The agenda for each session will include presentations by Aspen Systems Corporation, the encounter data training contractor, on related topics and will conclude with a question-and-answer period.

Registration

Registration for these training sessions is required and will be on a first-come, first-served basis, limited to two attendees per organization. A waiting list will be available for additional requests. Registration can be accomplished via the Internet at www.hcfa.gov/events or by completing a paper form available at the aforementioned Internet address. A confirmation notice will be sent to attendees upon finalization of registration.

Attendees will be provided with training materials at the time of the training session. We will accept written questions or requests for training materials either before the session or up to 14 days after the session. These written questions or requests must be sent to: Aspen Systems Corporation, ATTN: Wanda Keyes, Mail Stop 9Y, 2277 Research Boulevard, Rockville, Maryland 20850.

You may also contact Encounter Data Representative: Telephone Number: (301) 519–6700, Fax Number: (301) 519–6360, E-mail: encounterdata@aspensys.com.

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 31, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–14091 Filed 6–2–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Additional HRSA Competitive Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of funds for several HRSA programs. This Notice lists several programs that are announcing competitions for fiscal year (FY) 2000 funds but were not published in the Fall 1999 HRSA Preview.

This Notice includes funding for HRSA discretionary authorities and programs as follows: (1) National Oral Health Policy Center (MCHB); and (2) Partnership for State Oral Health Leadership Cooperative Agreement (MCHB).

These programs were not published in the Fall 1999 HRSA Preview and will only appear in the **Federal Register** and on the HRSA Home Page at: *http://www.hrsa.dhhs.gov/*. The next edition of the HRSA Preview is planned to be published in mid-2000. The purpose of the HRSA Preview is to provide the general public with a single source of

program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs.

Dated: May 30, 2000.

Claude Earl Fox,

Administrator.

How To Obtain Further Information

You can download this Notice in Adobe Acrobat format (.pdf) from HRSA's web site at *http://www.hrsa.dhhs.gov/.*

To Obtain an Application Kit

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions to fully assess your eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants. Upon review of the program descriptions, please determine which category or categories of application kit(s) you wish to receive and call 1–877–477–2123 to register on the specific mailing list. Application kits are generally available 60 days prior to application deadline. If kits are already available, they will be mailed immediately.

Also, you can register on-line to be sent specific grant application materials by following the instructions on the web page or accessing http://www.hrsa.gov/g-order3.htm directly. Your mailing information will be added to our database and material will be sent to you as it becomes available.

Grant Terminology

Application Deadlines

Applications will be considered ''on time'' if they are either received on or before the established deadline date or postmarked on or before the deadline date given in the program announcement or in the application materials.

Authorizations

The citations of provisions of the laws authorizing the various programs are provided immediately preceding groupings of program categories.

CFDA Number

Applicants must use the CFDA number when requesting application materials. The Catalog of Federal Domestic Assistance (CFDA) is a Governmentwide compendium of Federal programs, projects, services, and activities which provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient during performance is anticipated by the Agency.

Eligibility

Authorizing legislation and programmatic regulations specify eligibility for individual grant programs. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided for planning purposes and is subject to the availability of funds or congressional action.

Funding Priorities and/or Preferences

Special priorities or preferences are those which the individual programs have identified for the funding cycle. Some programs give preference to organizations which have specific capabilities such as telemedicine networking or established relationships with managed care organizations. Preference also may be given to achieve an equitable geographic distribution and other reasons to increase the effectiveness of the programs.

Key Offices

The Grants Management Office serves as the focal point for grants policy, budgetary, and business matters. The program office contact is provided for questions specific to the project activities of the programs and program objectives.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period/Budget Period

The project period is the total time for which support of a discretionary project has been programmatically approved. The project period consists of one or more budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

(1) That the estimated cost to the Government of the project is reasonable considering the anticipated results.

(2) That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to provide training to a fellow has adequate facilities and manpower.

(3) That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.

(4) That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

(5) That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

(6) That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria as they are the basis upon which their applications will be judged.

Technical Assistance

Some programs may have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site at *http://www.hrsa.dhhs.gov/* for the latest technical assistance information.

Frequently Asked Questions

1. HRSA lists many telephone numbers and e-mail addresses. Whom do I phone or e-mail and when?

Phone 1–877–477–2123 (1–877–HRSA–123) to register for application

kits. You must know the program's CFDA number and title.

If, before you register, you want to know more about the program, an e-mail/phone contact is listed. This contact can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. You will usually be encouraged to request the application kit so that you will have clear, comprehensive and accurate information available to you. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide technical assistance concerning your specific program, if you are unable to find the information within the materials provided.

2. The dates listed in the **Federal Register** notice and the dates in the application kit do not agree. How do I know which is correct?

First, register at 1–877–477–2123 (1–877–HRSA–123) for each program that you are interested in as shown in the Notice.

Notice dates for application kit availability and application receipt deadline are based upon the best known information at the time of publication. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is most likely to be correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit. Therefore, if you are registered at 1–877–477–2123 (1–877–HRSA–123), you will receive the most current information.

3. Are programs announced in the **Federal Register** notice ever canceled?

Infrequently, programs announced may be withdrawn from competition. If this occurs, a cancellation notice will be provided at the HRSA Homepage at *http://www.hrsa.dhhs.gov/.*

If you still have unanswered questions, please contact John Gallicchio or Jeanne Conley of the HRSA Grants Policy Branch at 301–443–6507 *(jgallicchio@hrsa.gov* or *jconley@hrsa.gov)*. Maternal and Child Health Bureau (MCHB) Grants Management Office: 301–443–1440.

The MCHB announces the following two grant programs:

1. National Oral Health Policy Center (MCHB)

Authorization: Social Security Act, Title V, 42 U.S.C. 701

Purpose:

The purpose of this Policy Center is to explore critical health policy issues around access to comprehensive oral health services for children and their families. A special emphasis on policy issues as they pertain to underserved, vulnerable populations (*i.e.* Medicaid and SCHIP eligible populations, children with special health care needs, minority populations) and the oral health care delivery system as a component of the overall health care infrastructure is required.

Eligibility: 42 CFR 51a.3.

Funding Priorities and/or Preferences: None.

Review Criteria:

Final criteria are included in the application kit.

Estimated Amount of This Competition: $125,000/year.

Estimated Number of Awards: 1.

Estimated Project Period: Three years, from 9/30/00 through 4/30/03.

Application Available: 6/15/00.

To Obtain This Application Kit:

CFDA Number: 93.110AD.

Call for Application Kit: 1–877–477–2123 (1–877–HRSA–123).

Application Deadline: 8/18/00.

Projected Award Date: 9/30/00.

The first budget period is expected to be 7 months; subsequent budget periods will be 12 months.

Contact Person: John P. Rossetti 301 443–6600 e-mail: *jrossetti@hrsa.gov.*

2. Partnership for State Oral Health Leadership Cooperative Agreement (MCHB)

Authorization: Social Security Act, Title V, 42 U.S.C. 701.

Purpose:

The purpose of this program is to fund a cooperative agreement with a professional organization representing the oral public health community at the State level. The agreement will provide a forum for the gathering of information and data and the provision of technical expertise to the dental public health community that increases access to the prevention of oral disease and access to dental services. This will be accomplished by appropriate needs assessment, program planning, assurance and systems development.

Eligibility: 42 CFR 51a.3.

Funding Priorities and/or Preferences:

A funding preference will be given to institutions of higher learning with extensive experience in early discharge research, linkage with the Secretary's Advisory Committee on Infant Mortality, and published research and recognition in the relevant field.

Review Criteria:

Final criteria are included in the application kit.

Estimated Amount of This Competition: $130,000/year.

Estimated Number of Awards: 1.

Estimated Project Period: Five years, from 9/30/00 through 7/31/05.

Application Available: 6/15/00.

To Obtain This Application Kit:

CFDA Number: 93.110AD.

Call for Application Kit: 1–877–477–2123 (1–877–HRSA–123).

Application Deadline: 8/18/00.

Projected Award Date: 9/30/00.

The first budget period is expected to be 10 months; subsequent budget periods will be 12 months.

Contact Person: John P. Rossetti 301/443–6600 e-mail: *jrossetti@hrsa.gov.*

[FR Doc. 00–13951 Filed 6–2–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes will meet on June 8, 2000, at the National Marine Fisheries Service. The purpose of the meeting is to:

- Update Committee members on the current activities of the Interagency Task Force (ITF); and to
- Review and discuss the ITF Working Group's draft product on improving the conservation of the Endangered Species Act Section 7 consultation with the Federal Energy and Regulatory Commission's licensing process.

DATES: The meeting will be held June 8, 2000; 9:00am–3pm.

ADDRESSES: National Marine Fisheries Service, Building SSMC3, 4th Floor Conference Room, 4527, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kimberly St. Bernard, Secretary to the Director, Office of Habitat Conservation (OHC), (301) 713–2325.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to

attend the meeting and will be given an opportunity to provide comments.

Less than 15 days' notice of this meeting is being given because of recently resolved administrative matters. In light of the difficulty of making changes to travel plans and schedules and the expenses such changes would entail, it is necessary to hold this meeting on June 8, 2000, as originally planned.

You should inform Security on the building lobby level that you are attending a meeting hosted by the OHC, (301) 713–2325. After calling OHC, Security will issue you a visitor's pass and direct you to the 4th Floor Conference Room, 4527.

Dated: May 31, 2000.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 00–14092 Filed 6–1–00; 11:32 am]

BILLING CODE 4310–10–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plan for Pea Island National Wildlife Refuge in Dare Co., NC

ACTION: Notice of Intent to conduct public scoping meetings to obtain suggestions and information on issues to include in the preparation of a Comprehensive Conservation Plan for Pea Island National Wildlife Refuge in Dare County, North Carolina.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations.

The Service will hold meetings as follows:

Monday, June 26, 2000

1 p.m.–4 p.m.
6 p.m.–9 p.m.
Rodanthe Community Center, Rodanthe, North Carolina 27968, (252) 987–2620

Tuesday, June 27, 2000

1 p.m.–4 p.m.
6 p.m.–9 p.m.
North Carolina State Aquarium, 374 Airport Road, Manteo, North Carolina 27954, (252) 473–3493

DATES: Written comments should be received within 30 days of this publication.

ADDRESSES: Comments and requests for information concerning this refuge may be addressed to: D.A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. Box 329, Edenton, North Carolina 27932, (252) 482–2364.

Information concerning the refuge may be found at the following website: http://rtncf-rci.ral.r4.fws.gov

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D_A_Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. Brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies.

Pea Island National Wildlife Refuge was established by Presidential Executive Order 7864 in April 19938, as a refuge and breeding ground for migratory birds and other wildlife.

Dated: May 30, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–13943 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 9 a.m. to 5 p.m. on Wednesday, June 28, 2000 and from 8 a.m. to 3 p.m. on Thursday, June 29, 2000.

PLACE: The meeting will be held at the Best Western Bayshore Inn, 3500 Broadway, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Elizabeth H. Stevens,

Manager, California/Nevada Operations.

[FR Doc. 00–13944 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Notice of Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed

collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* On February 8, 2000, BLM published a notice in the **Federal Register** (65 FR 8439) requesting comments on this proposed collection. The comment period closed on April 17, 2000. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM Clearance Officer at the telephone number listed below. Questions concerning the scope and administration of the program may be obtained by contacting the Bureau's program leader at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–0025), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether collecting the information is necessary for BLM's proper functioning, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Mineral Patent Applications (43 CFR 3860) and Adverse Claims, Protests, and Conflicts (43 CFR 3870).

OMB Approval Number: 1004–0025.

Abstract: The BLM is proposing to renew the approval of an information collection for existing rules at 43 CFR 3860 and 3870. These rules provide for the application process to request a mineral patent for mining claims and mill sites under the General Mining Law of 1872, as amended. They also provide for land surveys of the requested mining claims or sites required before entities apply for a mineral patent and explain procedures set by statute for resolving adverse claims against the application by rival owners of mining claims and for protests of the public against irregular applications. The regulations also set forth the final administrative framework for concluding the process.

Bureau Form Numbers: 3860–2 and 3860–5.

Frequency: Once for the mineral survey, and once for the application for patent, or filing a protest or adverse claim.

Description of Respondents: Owners of unpatented mining claims and mill sites located upon the public lands, reserved mineral lands of the United States, National Forests, and National Parks.

Estimated Completion Times:

1 hour (mineral survey application)
80 Hours (mineral patent application)
2 hours (protests), 2 hours (contests), 2 hours (adverse claims)

Note: Completion times for the forms, 3860–2 and 3860–5, 4 hours and 1 hour respectively, are included in the burden estimates above.

Annual Responses:

25 (mineral surveys)
150 (mineral patent applications)
20 (protests)
50 (contests)
10 (adverse claims)

Note: Annual responses for the forms, 3860–2 and 3860–5, 125 and 25, respectively, are included in the annual response totals above.

Annual Burden Hours:

25 (mineral surveys)
12,000 (mineral patent applications)
40 (protests)
100 (contests)
20 (adverse claims)
Total: 12,185 hours

Annual Cost Burden Due to Non-Burden Hour Costs: $6.6 million.

Bureau Clearance Officer: Carole Smith (202) 452–0367.

Bureau Program Leader: Roger A. Haskins (202) 452–0355.

Dated: May 23, 2000.

Carole Smith,

BLM Information Clearance Officer.

[FR Doc. 00–14003 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting on Thursday, June 29, 2000, from 8:30 a.m. until noon. The meeting will be held in the Anchorage Federal Building at 7th and C Street in room 135.

Topics to be discussed at the meeting include standards for BLM resource management in Alaska, off-road vehicle use on public lands, and management of the Gulkana Wild and Scenic River. Public comment concerning items on the agenda will be heard from 11 a.m. until noon. Written comments may be submitted at the meeting or mailed to BLM at the address below.

Following the meeting, the council will travel to Glennallen in preparation for a site visit to the Gulkana River Friday, June 30, 2000.

ADDRESSES: Inquiries or comments should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: May 17, 2000.

Brenda Zenan,

Acting State Director.

[FR Doc. 00–13903 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1220–EB]

Campground Fees for BLM-Administered Campgrounds in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is establishing recreation use fees for campgrounds that did not have existing supplementary rules related to recreation use fees. BLM is also reaffirming existing supplementary rules for BLM-administered campgrounds throughout California. We are taking this action to authorize the collection of fees from those who use the campgrounds. This action has the effect of requiring campground users to pay fees for the use of certain designated campgrounds.

EFFECTIVE DATE: These supplementary rules are effective on June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Smith, BLM California State Office (CA–930), 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886; 916/978–4644.

SUPPLEMENTARY INFORMATION: The authority for these Supplementary Rules is contained in the Code of Federal Regulations, Title 43, § 8365.1–6, Supplementary Rules. Violation of any supplementary rule by a member of the public, except for the provisions of § 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Federal Regulations, Title 43, § 8360.0–7 violations of supplementary rules authorized by § 8365.1–7 are punishable in the same manner.

Existing BLM Campgrounds in California

This supplementary rule authorizes the establishment and re-affirmation of recreation fees at all existing fee campgrounds on BLM administered lands in California. The following campgrounds are subject to recreation fees:

Arcata Field Office: Wailaki, Nadelos, Tolkan, Horse Mountain, Honey Dew, and Mattole
Redding Field Office: Junction City, Douglas City, Steel Bridge, and Reading Island
Eagle Lake Field Office: North Eagle Lake
Folsom Field Office: South Yuba, McCabe Flat, Railroad Flat, and Willow Placer
Ridgecrest Field Office: Fossil Falls
Barstow Field Office: Owl Canyon and Afton Canyon
Palm Springs/South Coast Field Office: Corn Springs
El Centro Field Office: Lark Canyon and Cottonwood

Dated: May 24, 2000.

Al Wright,

Acting State Director, California.

[FR Doc. 00–13659 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1430–EU; GP00026]

Notice of Proposed Decision To Amend Land Use Plan

May 25, 2000.

AGENCY: Bureau of Land Management.

ACTION: Notification of the proposed decision to amend the Brothers-La Pine Resource Management Plan.

SUMMARY: The Brothers-La Pine RMP will be amended to make available for direct sale the following public lands in Deschutes County, Oregon, under Section 7 of the *Oregon Public Lands Transfer and Protection Act of 1998*, at not less than the fair market value:

Williamette Meridian

T. 22 S., R. 10 E.,
Tract 38.
Containing 518.18 acres, more or less.

The Brothers-La Pine RMP assigns all lands administered by the Prineville District to one of three Land Tenure Zones. Lands in Zone 1 are identified for retention and may not be transferred from federal ownership. Lands designated as Z–2 are areas with potential for high public resource values that may be exchanged for lands with higher public values. Lands designated as Z–3 are areas that may be suitable for disposal through transfer to another agency, exchange, or public sale. The regulations at 43 CFR 2711.1–1(a) require that no parcel of public land may be offered for sale until it has been specifically identified in an approved land use plan (*i.e.* assigned to Land Tenure Zone 3). The parcel proposed for sale is Land Tenure Zone 2, but would be assigned to Land Tenure Zone 3 by this amendment.

The Oregon Public Land Transfer Act of 1998 states that Tract 38 may be sold at fair market value to Deschutes County, Oregon, provided that the land is determined to be suitable for sale through the lands use planning process. The *Environmental Assessment for Direct Sale of Public Land and Amendment to the Brothers-La Pine Resource Management Plan* and public and interagency reviews are completed.

The RMP amendment would facilitate the completion of a land sale that is a key component in a program developed by Deschutes County to protect groundwater. The need by the county to acquire this parcel was identified during the Regional Public Solving Project, which is a State of Oregon sponsored process to evaluate community problems stemming from unregulated development that occurred prior to the implementation of state land use planning laws.

The Act also provides that the amount paid for the land shall be deposited in a special account for the purpose of purchasing environmentally sensitive land; in so doing, the Act provides for the acquisition of non-federal lands to replace federal lands sold to the county.

The patent would be issued subject to valid and existing rights and a reservation for ditches or canals as required by the Act of August 30, 1890 (43 U.S.C. 945). The patent would also be subject to a restrictive covenant that would prohibit the disposal of aggregate, sand, or gravel from the property.

ADDRESSES: Detailed information concerning the plan amendment and the direct sale of public lands is available for review at the office of the Bureau of Land Management, Prineville District, 3050 NE Third, Prineville, Oregon, 97754.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR part 4 and on Form 1842–1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 45 days from the receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

Dated: May 23, 2000.

Donald L. Smith,

Acting Prineville District Manager.

[FR Doc. 00–13988 Filed 6–22–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–66423]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw a 0.57-acre parcel of public land for a period of 20 years to protect a wildland fire station site. This notice closes the land for up to 2 years from surface entry and mining while various studies and analyses are made to make a final decision. The land is located within the incorporated City of Carlin, Nevada and is not subject to mineral leasing.

DATES: Comments and requests for meeting should be received on or before September 5, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: On May 22, 2000, a petition was approved

allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 33 N., R. 52 E.,
Sec. 27, lots 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 in Block 6, Town of Carlin, as shown on the map filed in the office of the County Recorder of Elko County, Nevada, on March 6, 1919.

The area described contains 0.57 acres in Elko County. The land is located within the incorporated city limits Carlin, Nevada, and is not subject to mineral leasing (43 CFR 3100.0–3(a)(2)(iii)).

The purpose of the proposed withdrawal is to protect a Bureau of Land Management wildland fire station site. Funding has been approved for construction of the fire station.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: May 26, 2000.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 00–13992 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed Information Collection

AGENCY: National Park Service.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to renew authority for the collection of information under 36 CFR part 51 relating to the submission of offers in response to concession prospectuses issued by NPS. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 5, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related materials, contact Wendelin M. Mann at (202) 565–1219, or electronically to *wendy_mann@nps.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 13200.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR part 51, Concession contracts, relating to the submission of offers in response to prospectuses issued by NPS. NPS is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1024–0125, and is identified in 36 CFR Section 51.104.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 22, 2000 (65 FR 8735). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Submission of Offers requirement in response to concession prospectuses—36 CFR 51.

OMB Control Number: 1024–0125.

Summary: The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award and administration of NPS concession contracts. The regulations require the submission of offers by parties interested in applying for a NPS concession contract. Specific requirements regarding the information that must be submitted by offerors in response to a prospectus issued by NPS are contained in sections 403 (4), (5), (7), and (8) of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Persons or entities seeking a National Park Service concession contract.

Total Annual Responses: 240.

Total Annual Burden Hours: 76,800.

Total Non-hour Cost Burden: $1,120,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1024–0125 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to Wendelin M. Mann, Concession Program, National Park Service, 1849 C Street, NW, Room 7313, Washington, DC 20240, or electronically to *wendy_mann@nps.gov*.

Dated: May 23, 2000.

Betsy Chittenden,

Deputy Manager, Washington Administrative Program Center.

[FR Doc. 00–13912 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/Draft Environmental Impact Statement, Boston Harbor Islands National Recreation Area, Massachusetts

AGENCY: National Park Service.

ACTION: Notice of Availability of Draft General Management Plan/Draft Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, this notice announces the availability for public review of a Draft General Management Plan/Draft Environmental Impact Statement for Boston Harbor Islands National Recreation Area, Suffolk, Norfolk, and Plymouth Counties, Massachusetts. In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental impact statement was prepared to assess the impacts of implementing the general management plan.

The Draft General Management Plan/Draft Environmental Impact Statement presents, in a policy level document, four management alternatives, including a preferred alternative and a no-action alternative, then assesses the potential environmental and socioeconomic effects of the actions presented on park resources, visitor experience, and the surrounding area. The alternatives differ in their approaches to management. The preferred alternative calls for a strong emphasis on resource preservation, encouraging most visitors to visit a few islands while allowing preservation of many other islands in their ''natural'' condition. Other alternatives would emphasize either preserving resources or accommodating visitors throughout the island system. The no-action alternative would continue current management by a variety of local, state, federal, and private entities with no new funding from the National Park Service.

DATES: The formal public review period is to start on or about June 3, 2000, for 60 days. Eight public forums will be held during the month of June. The dates, times, and location of the public forums will be advertised in local media.

SUPPLEMENTARY INFORMATION: Copies of the document will be available for review at the following locations:

- Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston, Massachusetts 02110
- Public Libraries in Greater Boston

The full document will also be posted on the internet at www.nps.gov/BOHA/admin.

To request copies of the document, please write or fax the Project Manager, Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston MA 02110, fax (617) 223–8671.

Comments on the Draft General Management Plan/Draft Environmental Impact Statement should be submitted to George Price, Project Manager, Boston Harbor Islands National Park Area, 408 Atlantic Avenue, Suite 228, Boston MA 02110. Comments may also be faxed to (617) 223–8671.

Dated: May 24, 2000.

George Price,

Project Manager, Boston Harbor Islands National Park Area.

[FR Doc. 00–13909 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Home of Franklin D. Roosevelt National Historic Site, Dutchess, New York; Notice of Availability of Draft Environmental Assessment and Master Plan Amendment

In accordance with the National Environmental Policy Act of 1969 and Section 106 of the Historic Preservation Act of 1966, the National Park Service (NPS) has prepared a Draft Master Plan Amendment/Environmental Assessment (EA) for the Home of Franklin D. Roosevelt NHS, located in Dutchess County, New York. The purpose of the EA is to describe plans to build a visitor and education/conference center jointly with the National Archives and Records Administration (NARA) to serve the Home of Franklin D. Roosevelt NHS and the Franklin D. Roosevelt Library. Appended to the EA is a Memorandum of Agreement (MOA), in draft, guiding historic preservation in the development of the project. The EA describes the alternatives for the proposed center. The EA will serve to update the 1977 Master Plan and Final Environmental Impact Statement for the Home of Franklin D. Roosevelt NHS with respect to visitor orientation and parking. Further, the EA provides an analysis of the environmental consequences of the alternatives. The alternatives are compared and contrasted in terms of their impacts on the cultural, historic, and natural environment.

Copies of the document are available for review at the following locations:

—Home of Franklin D. Roosevelt NHS, 4097 Albany Post Rd., Hyde Park, NY
—Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, NY
—The Hyde Park Public Library

Copies of the EA may be requested from either: Superintendent, Home of Franklin D. Roosevelt NHS, 4097 Albany Post Road, Hyde Park, New York, 12538–1997, (914) 229–9115, or Director, Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, New York, 12538–1997, (914) 229–8114.

Written comments will be accepted at either of the above addresses through June 23, 2000. The NPS and NARA will jointly hold a public meeting on June 8, 2000, at 7 p.m. to explain the alternatives. The meeting will be held at the Franklin D. Roosevelt Library, 4079 Albany Post Rd., Hyde Park, New York, and will include opportunities for public comment on the project. After analyzing the comments from the meeting and those submitted in writing during the comment period, the agencies will make a decision on the course of action.

Sarah Olson,

Superintendent.

[FR Doc. 00–13908 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lower East Side Tenement National Historic Site, New York, New York; Notice of Intent To Prepare an Environmental Assessment and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–109 section 102(c)), the National Park Service (NPS) is preparing an

Environmental Assessment (EA) for the Lower East Side Tenement National Historic Site (NHS), located in the city of Borough of Manhattan, New York, New York. The purpose of the EA is to assess the environmental consequences of alternative management strategies that will be described in the general management plan for Lower East Side Tenement NHS. A number of alternatives will be formulated for cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold a public meeting June 14, 2000 that will provide an opportunity for public input into the scoping for the GMP/EA. The meeting will begin at 7:00 PM, at the Lower East Side Tenement Museum, 97 Orchard Street, New York, New York.

The purpose of this meeting is to obtain both written and verbal comments concerning the future direction and development of Lower East Side NHS. Those persons who wish to comment verbally or in writing or who require further information should contact Ruth Abram, President, Lower East Side Tenement Museum. 66 Allen Street, New York, New York 10002, (212) 431–0233 Ext. 212.

The draft GMP/EA is expected to be completed and available for public review in fall 2000. After public and interagency review of the draft document comments will be considered, and a final EA followed by a Record of Decision will be prepared.

Dated: May 15, 2000.

Thomas Dyer,

Chief of Planning, Northeast Region Development Office.

[FR Doc. 00–13911 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Going-to-the-Sun Road Rehabilitation Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation, Glacier National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the Going-to-the-Sun Road Rehabilitation for Glacier National Park. This Environmental Impact Statement will be approved by the Intermountain Regional Director.

The Going-to-the-Sun Road, a National Historic Landmark, is in need of rehabilitation. Since its opening in 1932 it has had limited repairs and reconstruction resulting in a deteriorating condition resulting in visitor use, maintenance, and safety concerns. Rehabilitation of the road is extremely difficult because of the very narrow width and the limited room available for staging construction and performing repairs. The narrow road corridor, the short construction season, and extreme and unpredictable weather conditions affect both the integrity of the road and the rehabilitation effort. Avalanches, rock falls, and repeated freezing and thawing continually deteriorate the road and jeopardize both the public and construction workers safety.

In the final General Management Plan Environmental Impact Statement for Glacier National Park, the preferred alternative reflects a desired condition for the road to be repaired and for its continued use, but not the method to achieve it. The road will continue to be protected as a national historic landmark. The road's historic character and significance will be preserved, and the needed repairs will be completed before the road fails. The National Park Service will minimize the impacts on natural resources, visitors and the economy, and minimize the rehabilitation costs.

The Going-to-the-Sun Road rehabilitation project/EIS includes a number of technical studies including engineering studies, a socio-economic study and marketing plan, a cultural landscape report, and a transportation/visitor use plan. A public advisory committee has also been established by authority of the Secretary of the Interior under Section 3 of Public Law 91–383 (16 U.S.C 1a–2(c)) to advise the National Park Service during development of the Rehabilitation Study.

The various technical studies will result in a series of findings and recommendations that will be combined into a range of alternatives to rehabilitate the road. These alternatives will be evaluated through the EIS process. A variety of factors will be considered in developing these alternatives including, but not limited to, socio-economic implications, natural resources, visitor use, and construction costs. These alternatives have not yet been developed. A no action alternative will also be considered as required by the National Environmental Policy Act (NEPA). The effort will result in a selected course of action for the rehabilitation of the Going-to-the-Sun Road.

Major issues include the limited season available for rehabilitation activities on the critical sections of the road, concerns about impacts to the local and regional economy (past studies have considered closing the road for limited periods of time), and potential short-term and long-term impacts to natural resources in Glacier National Park. The current poor condition of the road resulting in potential safety concerns to visitors and the travelling public underscores the purpose and need for the project.

If you wish to provide comments for consideration, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Attn: Going-to-the Sun Road Study Glacier National Park, West Glacier, Montana 59936. You may also comment via email at *glac_public_comments@nps.gov*, attention: GTTSR-Rehabilitation Project. Please include your name and return address in your email message. If you do not receive confirmation from the system that we received your email message, contact us directly at 406/888–7972. Finally, you may hand-deliver comments to Glacier National Park headquarters, West Glacier, Montana. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondents identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

When a scoping document is prepared and public meetings/open houses are scheduled, an announcement will be made in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Glacier National Park, (406) 888–7972.

Dated: May 18, 2000.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 00–13910 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

George Washington Memorial Parkway: Environmental Assessment of Proposed Wireless Telecommunications Facility at Great Falls Park, VA

ACTION: Notice of availability of an environmental assessment (EA) to erect a wireless telecommunications facility (cellular telephone monopole with support facility) that Bell Atlantic Mobile (BAM) has proposed for location on National Park Service (NPS) property at Great Falls Park, Virginia, which is managed by the George Washington Memorial Parkway.

SUMMARY: Pursuant to the Council on Environmental Quality regulations and National Park Service policy, NPS has completed an EA which analyzes five alternatives and discusses others which were considered but rejected. The five alternatives analyzed include: (1) 125-foot monopole; (2) 150-foot monopole as proposed by BAM; (3) 150-foot monopole with two larger co-locator buildings; (4) Alternative technology; and, (5) No action. The specific location proposed by BAM is the site where an existing 85-foot NPS antenna tower is located along the Ridge Trail approximately one-half mile from the junction of Old Dominion Drive and Georgetown Pike as one enters the park headed north along Old Dominion. NPS is soliciting comments on this EA. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act.

DATES: Comments on the EA are due by Friday, June 23, 2000. Two public hearings on the EA will be held. The first will be at the Great Falls Park Visitor Center on Monday June 5, 2000, 7 p.m.–8:30 p.m. The entrance road into the park is located at the intersection of Old Dominion Drive and Georgetown Pike. The second will be held on Wednesday, June 7, 2000, 7 p.m.–8:30 p.m. in the Brooke Hall meeting room at Rockwood Manor, 11001 MacArthur Boulevard, Potomac, Maryland. Rockwood Manor is located in Rockwood Park, southeast of the intersection of MacArthur and Falls Road in the vicinity of the C&O Canal National Historical Park and Trail, approximately 1.5 miles west of the Clara Barton Parkway.

ADDRESSES: Comments may be sent to Audrey Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, VA 22101 or via e-mail to gwmp_superintendent@nps.gov. Copies of the EA have been mailed to agencies, groups, and individuals on the project mailing list. A copy of the EA can also be found at the George Washington Memorial Parkway Headquarters along the northbound lane of the parkway in Turkey Run Park, McLean, Virginia. Turkey Run Park is located north of the CIA exit and south of Interstate 495. Additionally, the document may be viewed on the park's web page at http://www.nps.gov/gwmp/grfa by clicking on the link to the Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Ms. Audrey Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run Park, McLean, VA 22101; Telephone: (703) 289–2500.

Dated: May 30, 2000.

Audrey F. Calhoun,

Superintendent.

[FR Doc. 00–14002 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper Rio Grande Basin Water Operations Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public scoping meetings on development of a draft environmental impact statement (EIS) for upper Rio Grande basin water operations.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation), with and on behalf of other joint-lead agencies [U.S. Army Corps of Engineers (Corps), Department of Defense; and the New Mexico Interstate Stream Commission (Commission), State of New Mexico], is preparing a draft EIS on water operations in the Rio Grande Basin above Fort Quitman, Texas. Preparation of the draft EIS will be integral to the Upper Rio Grande Basin Water Operations Review. It is anticipated that a plan for water operations at existing Reclamation and Corps facilities will be developed.

The public is invited to participate in a series of scoping meetings that will be held throughout the upper Rio Grande basin to receive comments from interested organizations and individuals on the environmental impacts of water operations in the Rio Grande Basin above Fort Quitman, Texas. Reclamation invites other federal agencies, states, Indian tribes, local governments, and the general public to submit written comments and/or suggestions concerning the scope of the issues to be addressed in the draft EIS.

Each scoping meeting will begin at 6:00 p.m. There will be a presentation, an opportunity to discuss issues and ask questions of staff and managers, and an informal open house where various technical teams for the Operations Review and EIS will provide information on resources as well as receive comments. Comments will be taken and recorded in writing at the open house or they may be provided in writing by meeting participants. Written comments may also be mailed to Reclamation, the Corps, or the Commission at the names and addresses provided below. Written comments should be received no later than November 20, 2000, to be most effectively considered.

Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the draft EIS, should write to Mr. Chris Gorbach. When the draft EIS is complete, its availability will be announced in the **Federal Register**, in the local news media, and through direct contact with interested parties. Comments will be solicited on the document.

DATES AND LOCATIONS: The schedule of open public scoping meetings is as follows:

- June 28, 2000, 6–9 p.m., Alamosa Elks Lodge, 406 Hunt, Alamosa, Colorado
- June 29, 2000, 6–9 p.m., Kachina Lodge, 413 Paseo del Pueblo Norte, Taos, New Mexico
- July 26, 2000, 6–9 p.m., Northern New Mexico Community College, 921 Paseo de Onate, Espanola, New Mexico
- August 9, 2000, 6–9 p.m., El Meson Lodge, South Highway 84/64, Chama, New Mexico
- August 17, 2000, 6–9 p.m., Indian Pueblo Cultural Center, 2401 12th NW, Albuquerque, New Mexico
- September 20, 2000, 6–9 p.m., Radisson Hotel, 750 N. St. Francis, Santa Fe, New Mexico

- September 27, 2000, 6–9 p.m., El Paso Airport Hilton, 2027 Airway Blvd., El Paso, Texas
- October 17, 2000, 6–9 p.m., New Mexico State University, Corbett Center, Las Cruces, New Mexico
- October 18, 2000, 6–9 p.m., New Mexico Tech., Macy Center, 801 Leroy Place, Socorro, New Mexico

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

The Bureau of Reclamation ensures meeting accessibility to persons with disabilities. If you need sign language interpretation for the hearing impaired or have other special needs, please contact Mr. Chris Gorbach.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Gorbach, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette, N.W., Suite 1313, Albuquerque, New Mexico 87102–2162; telephone (505) 248–5379; faxogram (505) 248–5356; Email: cgorbach@uc.usbr.gov.

Ms. Gail Stockton, U.S. Army Corps of Engineers, Albuquerque District, 4101 Jefferson NE, Albuquerque, New Mexico 87109; telephone (505) 342–3348; Email: gail.r.stockton@usace.army.mil.

Mr. Rolf Schmidt-Petersen or Rhea Graham, New Mexico Interstate Stream Commission, Springer Square Building, 121 Tijeres Avenue NE, Suite 2000, Albuquerque, New Mexico 87102; telephone (505) 841–9480, extension 127; Email: Schmidt_Rolf@seo.state.nm.us or rgraham@ose.state.nm.us.

SUPPLEMENTARY INFORMATION: For supplementary information, please see the **Federal Register** notice of March 7, 2000, 65 FR 12030–12031.

Dated: May 25, 2000.

Larry P. Walkoviak,

Acting Regional Director, Upper Colorado Region.

[FR Doc. 00–14006 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Delta Drinking Water Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Delta Drinking Water Council will meet on June 28, 2000 to discuss several issues including the CALFED Drinking Water Improvement Strategy and projects related to the Strategy. This meeting is open to the public. Interested persons may make oral statements to the Delta Drinking Water Council or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Delta Drinking Water Council meeting will be held from 12 noon to 3:30 p.m. on Wednesday, June 28, 2000.

ADDRESSES: This meeting will be held at the Resources Building, 1416 Ninth Street, Room 1142, Sacramento, Calif. 95814.

FOR FURTHER INFORMATION CONTACT: Judy Heath, CALFED Bay-Delta Program, at (916) 653–2994. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California' agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Delta Drinking Water Council to advise the CALFED Program and the CALFED Policy Group through BDAC on necessary adaptations to the Program's Drinking Water Quality Improvement Strategy to achieve CALFED's drinking water objectives.

Minutes of the meeting will be maintained by the Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: May 30, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–13937 Filed 6–2–00; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

June 13, 2000 Board of Directors Sunshine Act Meeting

TIME AND DATE: Tuesday, June 13, 2000, 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. Appointment—Joan Logue-Kinder.
3. Approval of March 21, 2000 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm).

1. Finance Project in Southeast Europe.
2. Insurance Project in Bulgaria.
3. Finance Project in Equatorial Guinea.
4. Finance Project in Turkey.
5. Insurance Project in Brazil.
6. Approval of March 21, 2000 Minutes (Closed Portion).
7. Pending Major Projects.
8. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 31, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–14093 Filed 6–1–00; 10:33 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Review)]

Canned Pineapple From Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on canned pineapple from Thailand.

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 canned pineapple from Thailand 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; [1] to be assured of consideration, the deadline for responses is July 21, 2000. Comments on the adequacy of responses may be filed with the Commission by August 15, 2000. 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).

EFFECTIVE DATE: June 5, 2000.

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 July 18, 1995, the Department of Commerce issued an antidumping duty order on imports of canned pineapple from Thailand (60 FR 36775). 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. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

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 Thailand.

(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 canned pineapple.

(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 canned pineapple, excluding pineapple growers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 18, 1995.

(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 § 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.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 0–5–056, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

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 § 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 § 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 July 21, 2000. Pursuant to § 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 August 15, 2000. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 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 §§ 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 § 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, 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 the Domestic Industry 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 the Domestic Like Product. 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 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in case equivalents [2] 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;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers 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 1999 (report quantity data in case equivalents 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;

(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; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal

[2] One case equivalent equals 30 pounds of fruit net weight, exclusive of packaging.

consumption/company transfers 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 1999 (report quantity data in case equivalents 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 the 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 § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14024 Filed 6–02–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–702 (Review)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

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 ferrovanadium and nitrided vanadium from Russia 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;[1] to be assured of consideration, the deadline for responses is July 21, 2000. Comments on the adequacy of responses may be filed with the Commission by August 15, 2000. 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).

EFFECTIVE DATE: June 5, 2000.

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 July 10, 1995, the Department of Commerce issued an antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (60 FR 35550). 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. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

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 Russia.

(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 a single Domestic Like Product as ferrovanadium and nitrided vanadium.

(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 a single Domestic Industry as producers of ferrovanadium and nitrided vanadium, including toll-producers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is July 10, 1995.

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[1] No response to this request for information is required if a currently valid Office of Managemnet and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–055, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

(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 § 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.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact CarolMcCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 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 § 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 § 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 July 21, 2000. Pursuant to § 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 August 15, 2000. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 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 §§ 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 § 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, 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 the Domestic Industry 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 the Domestic Like Product. 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 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in 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;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers 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 1999 (report quantity data in 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;

(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; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers 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 1999 (report quantity data in 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 the 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 § 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–14025 Filed 6–2–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree for Interim Injunctive Relief Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on May 23, 2000, a proposed Partial Consent Decree for Interim Injunctive Relief (''Partial Consent Decree'') in *United States* v. *IBP, Inc.*, Civil Action No. 8:00–CV–28, was lodged with the United States District Court for the District of Nebraska.

In this action the United States seeks injunctive relief and civil penalties for IBP's past violations of the Clean Air Act and other environmental laws at its meatpacking plant and associated tannery and wastewater treatment facility in Dakota City, Nebraska. The United States asserts that IBP failed to install required air pollution control equipment as the company updated its complex from 1989 to 1995, and, as a result, illegally emitted an excessive amount of hydrogen sulfide into the air.

Under the Partial Consent Decree, IBP will build three new covered wastewater treatment lagoons by November 30, 2000; decommission its existing, uncovered lagoons that are largely responsible for emissions of approximately one ton each day of hydrogen sulfide; and undertake additional projects to limit the release of hydrogen sulfide into the air. The new lagoons will capture hydrogen sulfide generated by the wastewater and route it for treatment to a scrubber and flare. Any future uses of these lagoons will require approval by the Nebraska Department of Environmental Quality, subject to EPA's oversight.

The Partial Consent Decree further requires IBP to treat over three million gallons of well water used at its plant each day, in order to reduce the high concentration of sulfate in the well water, which breaks down into sulfides and in turn can be converted to hydrogen sulfide in wastewater.

The Partial Consent Decree also incorporates the work required under an Administrative Order on Consent entered into by EPA and IBP on April 27, 2000, which agreement requires IBP to install 7 on-site and 2 off-site air monitoring devices to monitor emissions of hydrogen sulfide from its Dakota City wastewater treatment facility.

The Partial Consent Decree today does not resolve the claims in the United States' lawsuit, but will provide relief to local citizens from IBP's hydrogen sulfide emissions as the case proceeds.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v.*IBP, Inc.,* Civil Action No. 8:00–CV–28, D.J. Ref. 90–11–3–06517/3.

The Partial Consent Decree may be examined at the Office of the United States Attorney, 487 Federal Building, 100 Centennial Mall North, Lincoln, NE 68508, and at U.S. EPA Region 7, 901 N. 5th St., Kansas City, Kansas 66101. A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C., 20044–7611. In requesting a copy, please enclose a check in the amount of $34.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits please enclose a check in the amount of $15.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13905 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *ITT Industries, Inc., et al.,* No. CV 99–00552 MRP (ANx), was lodged on May 17, 2000, with the United States District Court for the Central District of California, Western Division.

In an amended complaint filed concurrently with the lodging of the consent decree, the United States and the State of California seek injunctive relief for performance of response actions and reimbursement of response costs incurred by the United States Environmental Protection Agency (''EPA'') and by the California Department of Toxic Substances Control (''DTSC''), pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, in response to releases of hazardous substances at the Glendale North and South Operable Units (''OUs'') of the San Fernando Valley Basin Superfund Site, in Southern California.

Under the proposed consent decree, the settling defendants have agreed to fund and perform future response actions at the Glendale OUs. Future work includes construction, operation and maintenance of a groundwater extraction and treatment system. After four months of operation and maintenance by the settling defendants, the City of Glendale, a party to the consent decree although not a defendant in the complaint, shall assume responsibility for future operation and maintenance of the extraction and treatment system, as well as of certain other facilities.

In addition, the consent decree requires the settling defendants to pay $13,226,949 in EPA past costs, together with $38,053 in Department of Justice costs, to the United States and $83,550 in DTSC past costs to the State of California.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *ITT Industries, Inc., et al.,* DOJ Ref. #90–11–2–442A. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C 6973(d).

The proposed consent decree may be examined at the EPA Region 9 Superfund Records Center, 75 Hawthorne Street, Fourth Floor, San Francisco, California 94105, and at the Office of the United States Attorney for the Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $110.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of the defendants' signature pages and the attachments, may be obtained for $26.25.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13907 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Under the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

Notice is hereby given that on May 11, 2000, two proposed Consent Decrees (''Decrees'') in the *United States* v. *Natural Gas Processing Company and KCS Resources, Inc. d/b/a/ Mountain Resources, Inc.*, Civ. Action No. CV 00–65–RFC, were lodged with the United States District Court for the District of Montana, Great Falls Division. The United States filed this action pursuant to Section 1423(b) of the Safe Drinking Water Act (''SDWA''), 42 U.S.C. § 300h–2(b), seeking injunctive relief and civil penalties for the Defendants' violation of various provisions of Part C of the SDWA and of 40 CFR part 144.

The proposed Consent Decree with the Natural Gas Processing Company (''NGP'') requires NGP to pay a civil penalty of $54,000, including interest. The proposed Consent Decree with KCS Resources, Inc. d/b/a/ Mountain Resources, Inc. (''KCS'') requires KCS to pay a civil penalty of $25,000, including interest, and to perform a Supplemental Environmental Project involving the plugging of one or more abandon Class II Underground Injection Control wells in Montana.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530, and should refer to *United States* v. *Natural Gas Processing Company and KCS Resources Inc. d/b/a Mountain Resources, Inc.,* Civ. Action No. CV 00–65–RFC, and D.J. Ref. #90–5–1–1–4401.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado 80202 and the U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202. Copies of the Decrees may be obtained by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC

20044–7611. In requesting a copy, please enclose a check in the amount of $4.25 for the Natural Gas Processing Company Decree and $11.25 for the KCS Mountain Resources, Inc. Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 00–13904 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act Consistent With Departmental Policy, 28 CFR

50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Odabashian, et al.* was lodged with the United States District Court for the Western District of Tennessee on May 18, 2000 (95–2361 G/Bre). On November 5, 1995, the United States filed a First Amended Complaint pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), as amended, against five defendants. The First Amended Complaint alleges that the defendants are liable under Section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Pulvair Corporation Superfund Site in Millington, Tennessee. Subsequently, defendants filed various third-party complaints seeking contribution from various third-party defendants. The proposed Consent Decree settles the liability of Kincaid Enterprises, Inc., one of the defendants named in the November 5, 1995 Complaint. Under the Consent Decree, the Settlor agrees to reimburse the United States in the amount of $400,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States* v. *Robert Odabashian, et al.,* DOJ Ref. #90–11–3–1474.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Suite 410, 200 Jefferson Avenue, Memphis, TN 38103, and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–13906 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Health and Human Services Statistical data for refugee asylee adjusting status.

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 August 4, 2000.

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:* Reinstatement of a previously approved collection.

(2) *Title of the Form/Collection:* Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–643. Adjudications 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 primary purpose of the information collected on this form is for use in the Office of Refugee Resettlement Report to Congress (8 U.S.C. 1523). The Service is required to report on the status of refugees at the time of adjustment to lawful permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 32,370 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: May 30, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–13901 Filed 6–2–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; Technical Assistance/Bidders' Conferences.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of May 25, 2000, concerning the availability of grant funds designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. Technical assistance/bidders' conferences will be held regarding the Department's Solicitation for Grant Application (SGA) for Work Incentive Grants at the following times and places:

June 6: 1 p.m. to 5 p.m.—Pierson Auditorium, University of Missouri at Kansas City, 5000 Holmes Avenue, Kansas City, Missouri 64110 (816) 235–1758. Contact for this location is Kelli Ellerbusch.

June 8: 9 a.m. to 1 p.m.—Oakland Federal Building, 1301 Clay St., Oakland, California 94612. Contact for this location is Chris Neilson at (510) 628–0665.

June 15: 9 a.m. to 1 p.m.—U.S. Department of Labor Auditorium, 200 Constitution Ave., N.W. 20210. Contact at this location is Paul Bennett at (202) 693–4937.

Specific information related to the SGA can be obtained from the following homepage: *http://wdsc.org/disability.* For general information on the technical assistance/bidders' conferences, please contact Paul Bennett at (202) 693–4927 or via e-mail at bennett-paul@dol.gov. Please contact Mr. Bennett to identify any special needs required at the technical assistance conference you plan to attend. If you are traveling from out of town, you will need to make hotel reservations on your own.

Signed at Washington, DC, this 25th day of May, 2000.

Laura Cesario,

Grant Officer.

[FR Doc. 00–14005 Filed 6–2–00; 8:45 am]

BILLING CODE 4510–30–U

LIBRARY OF CONGRESS

The United States Copyright Office

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000522150–0150–01]

RIN 0660–ZA13

Report to Congress Pursuant to Section 104 of the Digital Millennium Copyright Act

AGENCIES: The United States Copyright Office, Library of Congress; and the National Telecommunications and Information Administration, United States Department of Commerce.

ACTION: Request for public comment.

SUMMARY: The United States Copyright Office and the National Telecommunications and Information Administration invite interested parties to submit comments on the effects of the amendments made by title 1 of the Digital Millennium Copyright Act, (''DMCA'') and the development of electronic commerce on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of such sections.

Section 104 of the DMCA directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to submit to the Congress no later than 24 months after the date of enactment a report evaluating the effects of the amendments made by title 1 of the Act and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of those sections. This **Federal Register** Notice is intended to solicit comments from interested parties.

DATES: Comments must be received by August 4, 2000. Reply comments must be received by September 5, 2000.

ADDRESSES: The Copyright Office and the National Telecommunications and Information Administration invite the public to submit written comments in electronic form by electronic mail or on diskette. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Comments submitted by electronic mail should be sent to both 104study@loc.gov and 104study@ntia.doc.gov. E-mail comments should be submitted as file attachments in one of the formats specified under **SUPPLEMENTARY INFORMATION** and should be sent to both the Copyright Office and National Telecommunications and Information Administration addresses.

Comments sent by regular mail may be sent to Jesse M. Feder, Policy Planning Advisor, Office of Policy and International Affairs, U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024; and Jeffrey E.M. Joyner, Senior Counsel, Office of Chief Counsel, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Paper submissions should include a version on diskette in one of the formats specified under **SUPPLEMENTARY INFORMATION**. Comments should be sent to both the Copyright Office and National Telecommunications and Information Administration addresses.

FOR FURTHER INFORMATION CONTACT: Jesse M. Feder, Office of Policy and International Affairs, U.S. Copyright Office, Library of Congress (202) 707–8350 and Jeffrey E.M. Joyner, National Telecommunications and Information Administration (202) 482–1816.

SUPPLEMENTARY INFORMATION:

File Formats and Required Information

Comments and reply comments may be submitted in electronic form, in one of the following formats:

1. If by electronic mail: Send to ''104study@loc.gov'' and ''104study@ntia.doc.gov'' a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect 7 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

2. If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization.

Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect Version 7 or earlier; (4) Rich Text File (RTF) format; or (5) ASCII text file format.

3. If by print only: Anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Copyright Office and the National Telecommunications and Information Administration to place these comments on their respective websites.

Background

On October 28, 1998, the Digital Millennium Copyright Act (''DMCA'') was enacted into law (Pub. L. No. 105–304, 112 Stat. 2860). Section 104 of the DMCA directs the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce to submit to the Congress no later than 24 months after the date of enactment a report evaluating the effects of the amendments made by title 1 of the Act and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code, and the relationship between existing and emerging technology and the operation of those sections. This **Federal Register** Notice is intended to solicit comments from interested parties on those issues.

The objective of title I of the DMCA was to revise U.S. law to comply with two World Intellectual Property Organization (WIPO) Treaties that were concluded in 1996 and to strengthen protection for copyrighted works in electronic formats. The DMCA establishes prohibitions on the act of circumventing technological measures that effectively control access to a work protected under the U.S. Copyright Act, and the manufacture, importation, offering to the public, providing or otherwise trafficking in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively controls access to or unauthorized copying of a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. The DMCA also makes it illegal for a person to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component or part thereof which is primarily designed or produced to circumvent a technological measure that effectively protects a right of a copyright owner in a work protected by copyright, has only a limited commercially significant purpose or use other than circumvention of such measures, or is marketed for use in circumventing such measures. In addition the DMCA prohibits, among other actions, intentional removal or alteration of copyright management information and knowing addition of false copyright management information if these acts are done with intent to induce, enable, facilitate or conceal a copyright infringement. Each prohibition is subject to a number of statutory exceptions.

Section 109 of the Copyright Act, 17 U.S.C. 109, permits the owner of a particular copy or phonorecord lawfully made under title 17 to sell or otherwise dispose of possession of that copy or phonorecord without the authority of the copyright owner, notwithstanding the copyright owner's exclusive right of distribution under 17 U.S.C. 106(3). Commonly referred to as the ''first sale doctrine,'' this provision permits such activities as the sale of used books. The first sale doctrine is subject to limitations that permit a copyright owner to prevent the unauthorized commercial rental of computer programs and sound recordings.

Section 117 of the Copyright Act, 17 U.S.C. 117, permits the owner of a copy of a computer program to make a copy or adaptation of the program for archival purposes or as an essential step in the utilization of the program in conjunction with a machine. In addition, pursuant to an amendment contained in title III of the DMCA, section 117 permits the owner or lessee of a machine to make a temporary copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes of maintenance or repair of that machine.

Specific Questions

The United States Copyright Office and the National Telecommunications and Information Administration of the United States Department of Commerce seek comment on the following specific questions. Parties need not address all questions, but are encouraged to respond to those for which they have particular knowledge or information.

1. Section 109

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of the first sale doctrine?

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of the first sale doctrine?

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of the first sale doctrine?

(d) What is the relationship between existing and emergent technology, on one hand, and the first sale doctrine, on the other?

(e) To what extent, if any, is the first sale doctrine related to, or premised on, particular media or methods of distribution?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which the first sale doctrine is established?

(g) Should the first sale doctrine be expanded in some way to apply to digital transmissions? Why or why not?

(h) Does the absence of a digital first sale doctrine under present law have any measurable effect (positive or negative) on the marketplace for works in digital form?

1. Section 117

(a) What effect, if any, has the enactment of prohibitions on circumvention of technological protection measures had on the operation of section 117?

(b) What effect, if any, has the enactment of prohibitions on falsification, alteration or removal of copyright management information had on the operation of section 117?

(c) What effect, if any, has the development of electronic commerce and associated technology had on the operation of section 117?

(d) What is the relationship between existing and emergent technology, on one hand, and section 117, on the other?

(e) To what extent, if any, is section 117 related to, or premised on, any particular technology?

(f) To what extent, if any, does the emergence of new technologies alter the technological premises (if any) upon which section 117 is established?

2. General

(a) Are there any additional issues that should be considered? If so, what are they and what are your views on them?

(b) Do you believe that hearings would be useful in preparing the required report to Congress? If so, do you wish to participate in any hearings?

Information collected from responses to this **Federal Register** Notice will be considered when preparing the required report for Congress.

Dated: May 16, 2000.

Marybeth Peters,

Register of Copyrights, United States Copyright Office.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 00–14001 Filed 6–2–00; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability; NUREG–1700, ''Standard Review Plan for Evaluating for Nuclear Power Reactor License Termination Plans''

The U.S. Nuclear Regulatory Commission is noticing issuance of NUREG–1700, ''Standard Review Plan for Evaluating Nuclear Power Reactor License Termination Plans.'' The standard review plan (SRP) guides staff reviewers on performing safety reviews of license termination plans (LTPs). Although the SRP is intended to be used by the NRC staff in conducting reviews, it can be used by interested parties responsible for conducting their own licensing review or developing an LTP. The principal purpose of the SRP is to ensure the quality and uniformity of staff reviews and to present a well-defined base from which to evaluate the requirements. It is also the purpose of the SRP to make the information about regulatory matters widely available to improve the understanding of the staff's review process by interested members of the public and the nuclear industry.

For further details with respect to this action, the documents are available for inspection at the NRC's Public Electronic Room at *http://www.nrc.gov.*

Dated at Rockville, Maryland, this 11th day of May 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–13949 Filed 6–2–00; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27179]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 26, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 19, 2000, the applicant(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9323)

Alliant Energy Corporation (''Alliant''), a registered holding company, its wholly owned intermediate nonutility holding company, Alliant Energy Resources, Inc. (''AER''), both located at 222 West Washington Avenue, Madison, Wisconsin 53703, and AER's nonutility subsidiary, Heartland Properties, Inc. (''HPI'' and together with Alliant and AER, ''Applicants''), 122 West Washington Avenue, 6th Floor, Madison, Wisconsin 53703, have filed an post-effective amendment, under section 9(c)(3) of the Act and rule 54 under the Act, to an application previously filed under the Act.

Under the terms of an order dated April 14, 1998 (HCAR No. 26856) (''1998 Order''), Alliant is currently authorized to hold passive investments, through HPI, in low-income housing projects (''LIHTC Properties'').[1] Under the terms of the 1998 Order, HPI indirectly owns a 1% general partnership interest in an investment fund, more particularly described below, that indirectly holds limited partnership interests in seventeen LIHTC Properties (''Fund Properties''), nine of which are located outside the Alliant service territory. In addition to the investments permitted in the 1998 Order, Applicants are authorized by order dated August 13, 1999 (HCAR No. 27060) to invest up to $50 million (''Investment Limitation'') from time to time over a five-year period to acquire additional LIHTC Properties in the Alliant Energy service territory.

The investment fund, Heartland Properties Equity Investment Fund I (''Fund''), is a limited partnership that holds limited partnership interests ranging between 88.9% and 99% in several other limited partnerships that own the Fund Properties. HPI's 1% general partnership interest in the Fund is held by its wholly owned subsidiary, Heartland Fund I, Inc. Minnesota Life Insurance Company (''MLIC'') is the sole limited partner in the Fund with a 99% limited partnership interest.

HPI has been approached by MLIC about the possibility of selling its limited partnership interest in the Fund to HPI. In order to consummate the transaction, Applicants now propose to modify the existing limitation on investments in LIHTC Properties located outside of the year's service territory, for the specific purpose of acquiring MLIC's limited partnership interest in the Fund. The expected purchase price of approximately $10.7 million, when combined with HPI'S current investment level in LIHTC Properties, will be within the Investment Limitation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13953 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission determined in the 1998 Order that HPI's interests in 84 LIHTC Properties were retainable under section 9(c)(3) of the Act, because the interests were acquired to generate tax credits under section 42 of the Internal Revenue Code and they were being converted into passive investments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24480]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 26, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May, 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

SSgA International Liquidity Fund [File No. 811–7775]

International Currency Fund [File No. 811–7773]

Summary: Applicants, a master fund and a feeder fund, respectively, in a master-feeder structure seek an order declaring that each applicant has ceased to be an investment company. As of February 18, 2000, all shareholders of each applicant redeemed their shares based on net asset value. No expenses were incurred in connection with the liquidation of either applicant.

Filing Dates: The applications were filed on February 17, 2000 and February 18, 2000, respectively, and amended on May 24, 2000.

Applicants' Address: 3435 Stelzer Road, Columbus, Ohio 43219–3035.

MuniVest Florida Fund [File No. 811–7580]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, applicant transferred its assets to MuniYield Florida Fund based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $277,489 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 12, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniVest New Jersey Fund, Inc. [File No. 811–7574]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, applicant transferred its assets to MuniYield New Jersey Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $320,916 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 15, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniYield New York Insured Fund II, Inc. [File No. 811–6661]

Summary: Applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, applicant transferred its assets to MuniYield New York Insured Fund, Inc. based on net asset value. Each holder of applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $419,909 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on May 16, 2000.

Applicant's Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings Michigan Insured Fund, Inc. [File No. 811–9125]

MuniVest Michigan Insured Fund, Inc. [File No. 811–7578]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniYield Michigan Insured Fund, Inc., based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $368,991 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applicants were filed on May 15, 2000 and May 16, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings New Jersey Insured Fund II, Inc. [File No. 811–8971]

MuniHoldings New Jersey Insured Fund III, Inc. [File No. 811–9127]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings New Jersey Insured Fund, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $332,631 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 15, 2000 and May 16, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniVest Pennsylvania Insured Fund [File No. 811–7750]

MuniHoldings Pennsylvania Insured Fund [Filed No. 811–9133]

Summary: Each applicant, a registered closed-end management investment

company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, each applicant transferred its assets to MuniYield Pennsylvania Fund based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $312,357 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 12, 2000 and May 15, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings California Insured Fund, Inc. [File No. 811–8213]

MuniHoldings California Insured Fund III, Inc. [File No. 811–8973]

MuniHoldings California Insured Fund IV, Inc. [File No. 811–9113]

Summary: Each applicant a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings California Insured Fund II, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $447,161 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Dates: The applications were filed on May 12, 2000, May 12, 2000 and May 15, 2000, respectively.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings Florida Insured Fund II [File No. 811–8543]

MuniHoldings Florida Insured Fund III [File No. 811–8815]

MuniHoldings Florida Insured Fund IV [File No. 811–9129]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On February 7, 2000, each applicant transferred its assets to MuniHoldings Florida Insured Fund based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $467,867 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Date: Each application was filed on May 12, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

MuniHoldings New York Fund, Inc. II [File No. 811–8575]

MuniHoldings New York Insured Fund II, Inc. [File No. 811–8813]

MuniHoldings New York Insured Fund III, Inc. [File No. 811–9131]

Summary: Each applicant, a registered closed-end management investment company, seeks an order declaring that it has ceased to be an investment company. On March 6, 2000, each applicant transferred its assets to MuniHoldings New York Insured Fund, Inc. based on net asset value. Each holder of each applicant's auction market preferred stock (''AMPS'') received the equivalent number of a newly created series of AMPS of the acquiring fund representing the same aggregate liquidation preference. Expenses of $408,233 were incurred in connection with each reorganization and were paid by the acquiring fund.

Filing Date: Each application was filed on May 12, 2000.

Applicants' Address: 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

Davis Intermediate Investment Grade Bond Fund, Inc. [File No. 811–3007]

Davis Tax-Free High Income Fund, Inc. [File No. 811–3270]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 17, 2000, applicants transferred their assets to Evergreen Intermediate Term Bond Fund, a series of Evergreen Fixed Income Trust, and Evergreen Tax-Free High Income Fund, a series of Evergreen Municipal Trust, respectively, based on the net asset value. Expenses of $81,800 and $181,400, respectively, incurred in connection with the reorganizations were paid by Davis Selected Advisers, Inc., investment adviser to applicants, and Evergreen Investment Management Company, investment adviser to each acquiring fund.

Filing Date: Each application was filed on May 16, 2000.

Applicants' Address: 2949 East Elvira Road, Suite 101, Tucson, Arizona 85706.

HT Insight Funds, Inc. d/b/a/ Harris Insight Funds [File No. 811–5366]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2000, applicant transferred its assets to Harris Insight Funds Trust based on net asset value. Total expenses of $228,600 were incurred in connection with the reorganization. Harris Trust and Savings Bank, applicant's investment adviser, paid printing expenses of $41,000. The remaining expenses were paid on a pro rata basis by applicant's five series.

Filing Date: The application was filed on May 1, 2000.

Applicants' Address: 3200 Horizon Drive, King of Prussia, Pennsylvania 19406.

Morgan Stanley Dean Witter Precious Metals and Minerals Trust [File No. 811–5988]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2000, applicant transferred its assets to Morgan Stanley Dean Witter Natural Resource Development Securities Inc. based on net asset value. Expenses of $118,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on April 27, 2000.

Applicant's Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Morgan Stanley Dean Witter Worldwide High income Fund [File No. 811–8717]

Discover Brokerage Index Series [File No. 811–9059]

Morgan Stanley Dean Witter Managers Focus Fund (formerly Morgan Stanley Dean Witter 20 + 20 Select Fund) [File No. 811–9077]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make any public offering or engage in business of any kind.

Filing Dates: Each application was filed on April 27, 2000, and amended on May 22, 2000.

Applicants' Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Warburg, Pincus Emerging Markets II Fund, Inc. [File No. 811–8937]

Warburg, Pincus Post-Venture Capital Fund, Inc. [File No. 811–7327]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On February 11, 2000, Warburg, Pincus Emerging Markets II Fund, Inc. transferred its assets to Warburg, Pincus Emerging Markets Fund, Inc. based on net asset value. On February 25, 2000, Warburg, Pincus Post-Venture Capital Fund, Inc. transferred its assets to Warburg, Pincus Global Post-Venture Capital Fund, Inc. based on net asset value. Expenses of approximately $100,000 incurred in connection with each reorganization were paid by applicant's investment adviser.

Filing Date: Each application was filed on April 18, 2000.

Applicants' Address: 466 Lexington Avenue, New York, New York 10017.

Warburg, Pincus Long-Short Equity Fund, Inc. [File No. 811–8929]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $5,000 incurred in connection with the liquidation were paid by applicant's investment adviser.

Filing Date: The application was filed on April 18, 2000.

Applicant's Address: 466 Lexington Avenue, New York, New York 10017.

Income Opportunities Fund 1999, Inc. [File No. 811–6716]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 27, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. As of April 27, 2000, applicant's transfer agent was holding approximately $441,000 in an escrow account for shares that have not been surrendered. Expenses of $37,890 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on February 8, 2000, and amended on April 27, 2000.

Applicant's Address: c/o Merrill Lynch Asset Management, L.P., P.O. Box 9011, Princeton, New Jersey 08536.

Evergreen Diversified Bond Fund (formerly Keystone Diversified Bond Fund (B–2)) [File No. 811–93]

Evergreen Intermediate Term Bond Fund (formerly Keystone Intermediate Term Bond Fund) [File No.811–4952]

Evergreen Tax Free Fund (formerly Keystone Tax Free fund) [File No. 811–2740]

Evergreen Tax Free Income Fund (formerly Keystone Tax Free Income Fund) [File No. 811–4951]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On January 24, 1998, Evergreen Diversified Bond Fund (formerly Keystone Diversified Bond Fund (B–2)) and Evergreen Intermediate Term Bond Fund (formerly Keystone Intermediate Term Bond Fund) transferred their assets to Evergreen Diversified Bond Fund and Evergreen Intermediate Term Bond Fund, respectively, each a newly-created series of Evergreen Fixed Income Trust based on net asset value.

On January 24, 1998, Evergreen Tax Free Fund (formerly Keystone Tax Free Fund) and Evergreen Tax Free Income Fund (formerly Keystone Tax Free Income Fund) transferred their assets to Evergreen Tax Free Fund, a newly-created series of Evergreen Municipal Trust based on net asset value.

All expenses incurred in connection with the reorganizations were paid by First Union National Bank, the parent of applicants' investment adviser.

Filing Date: Each application was filed on April 25, 2000.

Applicants' Address: 200 Berkeley Street, Boston, Massachusetts 02116.

Master Investment Trust, Series I [File No. 811–8086]

Pacific Horizon Funds, Inc. [File No. 811–4293]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By May 21, 1999, Master Investment Trust, Series I had transferred its assets to Nations Master Investment Trust, based on net asset value, and each series of Pacific Horizon Funds, Inc. had transferred its assets to a corresponding series of either Nations Fund, Inc., Nations Institutional Reserves, or Nations Fund Trust, based on net asset value. Total expenses of $8,720,361 incurred in connection with both reorganizations were paid by Banc of America Advisors, Inc., investment adviser to the acquiring funds.

Filing Dates: The applications were filed on March 14, 2000, and amended on May 12, 2000.

Applicants' Address: 400 Bellevue Parkway, Wilmington, Delaware 19103.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13952 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 5, 2000.

A closed meeting will be held on Thursday, June 8, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Thursday, June 8, 2000 will be:

Institution of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 1, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–14108 Filed 6–1–00; 11:39 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42832; File No. SR–ODD–00–02]

Self-Regulatory Organizations; OM London Exchange Limited; Order Approving Proposed Amendment to Options Disclosure Document

May 25, 2000.

On May 25, 2000, the OM London Exchange Limited (''OM London'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act'') [1] five definitive copies of OM London's options disclosure document (''ODD''), which OM London has revised to reflect the introduction of OMXcap Index options.[2]

OM London's ODD currently contains general disclosures concerning the characteristics and risks of trading equity and index options on OM London. Prior to May 26, 2000, OM London listed options on Swedish equity securities and on the OMX Index. On May 26, 2000, OM London will also list options on the OMXcap Index, a modified capital-weighted index designed to reflect the development of the Swedish stock market. OM London has revised its ODD to accommodate the introduction of OMXcap Index options. OM London's revised ODD also includes disclosures concerning certain restrictions on the trading of OMX Index options after May 26, 2000.

The Commission has reviewed OM London's revised ODD and finds that it complies with Rule 9b–1 under the Act. OM London's revised ODD provides information regarding OMXcap Index options sufficient to describe the special characteristics of OMXcap Index options.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[3] The Commission has reviewed OM London's revised ODD and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of OM London's revised ODD as of the date of this order.[4]

It is Therefore Ordered, pursuant to Rule 9b–1 under the Act,[5] that OM London's ODD as amended to reflect the listing of OMXcap index options (File NO. SR–ODD–00–02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13960 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 240.9b–1.

[2] The Commission previously reviewed OM London's ODD and found that its complied with Rule 9b–1 under the Act. *See* Securities Exchange Act Release No. 39080 (September 15, 1997), 62 FR 49553 (September 22, 1997) (order approving File No. SR–ODD–97–1).

[3] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[4] Rule 9b–1 provides that the use of an ODD shall not be permitted unless the option class to which the document relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On September 12, 1997, the Commission, pursuant to delegated authority, declared effective OM London's revised Form S–20 registration statement. *See* File No. 333–34519.

[5] 17 CFR 240.9b–1.

[6] 17 CFR 200.30–3(a)(39)(i).

[6] 17 CFR 200.30–3(a)(39(i)

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42833; File No. SR–CBOE–00–11]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Index Portfolio Shares

May 26, 2000.

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 March 29, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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 and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt listing standards to list and trade Index Portfolio Shares (''IPS''), securities issued by an open-end management investment company that seek to provide investment results similar to the price and yield performance of its underlying index. Once these listing standards have been approved, the Exchange intends to trade IPSs of a Fund based on the S&P 100 Index. Below is the text of the proposed rule change. New language is *italicized* and deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Rule 1.1

* * * * *

. . . Interpretations and Policies:

* * * * *

.03 the term ''Index Portfolio Shares'' or IPSs means securities that (a) are issued by an open-end management investment company based on a portfolio of stocks designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) are issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified number of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end management investment company which will pay to the redeeming holder stock and/or cash with a value equal to the next determined net asset value.

* * * * *

Rule 30.10 The unit of trading in stocks, [and] the unit of trading in IPRs *and the unit of trading in IPSs* shall be 100 shares or units, except as otherwise established [in either case] by the Exchange. The unit of trading in all other securities traded subject to the rules in this Chapter shall be as determined by the Board of Directors.

* * * * *

Rule 30.33

* * * * *

. . . Interpretations and Policies:

.01 The minimum fractional change for IPRs *and IPSs* shall be 1/64 of $1.00.

* * * * *

Rule 30.36 Rule 24.7 shall apply to the trading of stock index warrants, *IPSs* and IPRs. The term ''option'' as used therein shall be deemed for the purposes of this Rule to include a stock index warrant, *IPSs* or IPRs, as the case may be.

* * * * *

Rule 30.55

(b) The disclaimers found under Rule 24.14 shall apply to any Reporting Authority with respect to any index or portfolio underlying a series of IPRs, *IPSs*, index warrants or any other index-related security governed by the rules of Chapter XXX. The terms ''option'' and ''option contract'' as used in Rule 24.14 shall be deemed for the purpose of this rule to include IPRs, *IPSs*, index warrants or other index-related security governed by the rules of Chapter XXX, as the case may be.

* * * * *

Special Provisions for IPSs

Rule 30.56

Designation of an index or portfolio. The Exchange may list and trade Index Portfolio Shares (as defined in Interpretations and Policies .03 following rule 1.1) based on one or more foreign or domestic stock indexes or securities portfolios. Each issue of Index Portfolio Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which a series of Index Portfolio Shares is based shall be selected by the Exchange or its agent or by such other person as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

* * * * *

Rule 31.5

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M. IPSs. Notwithstanding any other provisions in these Rules to the contrary, a series of IPSs representing interests in a particular open-end management investment company (as those terms are defined in Interpretations and Policies .03 following Rule 1.1) may be listed on the Exchange subject to the criteria set forth below:

(a) Public Distribution—For each open-end management investment company, the Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange.

(b) Voting—Voting rights shall be as set forth in the applicable open-end management investment company prospectus.]

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Rule 31.94

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H. Policies Regarding IPSs.

Twelve months following the commencement of trading on the Exchange of a series of Index Portfolio Shares, the Exchange will consider the suspension of trading in, or removal from listing of, such series of IPSs, when in its opinion further dealing in such securities appears unwarranted under any of the following circumstances:

(a) there are fewer than 50 beneficial holders of the series of Index Portfolio Shares for 30 or more consecutive trading days; or

(b) the value of the index or portfolio of securities on which the series of Index Portfolio Shares is based is no longer calculated or available; or

(c) such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange Inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Portfolio Shares issued in connection with such entity be removed from Exchange listing.

* * * * *

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Interpretation .03 to CBOE Rule 1.1, new CBOE Rule 30.56, new paragraph M to CBOE Rule 31.5, and new paragraph H to CBOE Rule 31.94; and to amend CBOE Rule 30.10, Interpretation .01 to CBOE Rule 30.33, CBOE Rule 30.36, and CBOE Rule 30.55, to permit the listing and trading of IPSs, *i.e.,* securities issued by an open-end management investment company that seeks to provide investment results similar to the price and yield performance of its underlying index. The Exchange believes that IPSs would provide investors with increased flexibility in meeting their investment needs.

a. *Index Portfolio Shares.* IPSs will be issued by an entity registered with the Commission under the Investment Company Act of 1940, as amended, as an open-end management investment company, commonly known as a mutual fund (''Fund''). A Fund may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. The Exchange represents that IPSs are essentially the same as Index Fund Shares, securities that have traded on the American Stock Exchange LLC (''Amex'') since the Commission approved Amex Rules 1000A *et seq.* in March 1996,[3] The CBOE also states that IPSs are similar to CBOE's Index Portfolio Receipts (''IPRs''), which are securities issued by a unit investment trust rather than a Fund. The Commission approved standards for the listing and trading of IPRs in 1998.[4]

The CBOE intends to list and trade IPSs of a Fund (to be managed by Barclays Global Fund Advisors) that will seek to provide investment results that correspond generally to the price and yield performance of the S&P 100 Index.[5] The CBOE states that this index represents the large capitalization growth sector of the U.S. market and accounts for approximately 38% of the market capitalization of all U.S. equity securities. The CBOE represents that the index consists of 100 stocks that are some of the largest companies in the U.S. equity market and that size, liquidity, and sector representations are the primary determinants in choosing index constituents.

b. *Issuance and Redemption.* Issuances of IPSs by a Fund will be made only in minimum size aggregations or multiples thereof (''Creation Units''). The size of the applicable Creation Unit will be set forth in the Fund's prospectus, and will vary from one series of IPSs to another, but generally will be substantial (*e.g.,* at least 50,000 shares).[6] It is expected that

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[4] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

[5] At the time, the CBOE has no plans to list series of IPSs for indices other than that described in the present rule filing. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division of Market Regulation (''Division''), Commission; Susie Cho, Attorney, Division, Commission, on April 25, 2000.

[6] The Commission notes that if in the future the number of shares per Creation Unit of an S&P 100 series were to be changed, or the value of a Creation Unit were to fall significantly, such a change could require the filing of a proposed rule change by the

a Fund will issue and sell IPSs through a principal underwriter on a continuous basis at the net asset value (''NAV'') per share next determined after an order to purchase IPSs in Creation Unit size aggregations is received in proper form.

The Exchange expects that Creation Unit size aggregations of IPSs generally will be issued in exchange for the ''in kind'' deposit of a specified portfolio of securities, together with a specified amount of cash. The Exchange anticipates that such deposits will be made primarily by institutional investors, arbitrageurs, and market maker members of the Exchange. Similarly, redemption of IPSs generally will be made ''in kind,'' with a portfolio of securities and/or cash exchanged for IPSs that have been tendered for redemption.

c. *Trading of IPSs.* Following issuance, IPSs will be trade on the Exchange like other equity securities, and CBOE equity trading rules generally would apply to the trading of IPSs. IPSs will be registered in book entry form through The Depository Trust Company (''DTC''), which means no stock certificates will be issued. The Exchange represents that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions and other factors. Trading in IPSs on the Exchange may be effected until 3:15 p.m. (central time) each business day. The unit of trading of IPSs will be 100 shares or units and the minimum fractional change in IPSs will be 1/64 of $1.00.

d. *Distributions.* A Fund may make periodic distributions of dividends from net investment income, if any. A Fund also distribute its capital gains, if any, to investors annually.

e. *Criteria for Initial and Continued Listing.* The Exchange believes that the proposed standards for listing and delisting of IPSs allow some flexibility for the Exchange. The Exchange will establish a minimum number of IPSs required to be outstanding at the time of commencement of trading on the Exchange. The Exchange anticipates that a minimum of two Creation Units in any series of IPSs would be required to be outstanding before trading could begin. Each series of IPSs will be subject to the initial and continued listing criteria of new proposed CBOE Rules 31.5M and 31.94H.

CBOE Rule 31.94H provides that twelve months after the commencement of Exchange trading of a series of IPSs, the Exchange will consider suspension of trading in, or removal from listing of, such series under any of the following circumstances:

(a) There are fewer than 50 beneficial holders of the series of IPSs for 30 or more consecutive trading days;

(b) The value of the index or portfolio of securities on which the series of IPSs is based is no longer calculated or available; or

(c) Such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Exchange will also require that IPSs be removed from listing upon termination of the Fund that issued such shares.

f. *Disclosure.* With respect to investor disclosure, the Exchange notes that, pursuant to the requirements of the Securities Act of 1933, as amended, all investors in IPSs will receive a prospectus, including investors purchasing in secondary market transactions on the Exchange. This is due to the fact that the Creation Units will be in continuous distribution.

Prior to commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific series and to applicable Exchange rules. That circular will inform members of their responsibilities with respect to transactions in such IPSs. The circular will inform member organizations of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable; they may be redeemed in Creation Units only.

g. *Trading Halts.* Prior to commencement of trading in IPSs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in IPSs. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in CBOE Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, trading in IPSs would be halted (along with the trading of other securities on the Exchange) if the circuit breaker parameters under CBOE Rule 6.3B are reached.

h. *Surveillance.* The Exchange will use the surveillance procedures that it has been using for the trading of other non-option securities traded on the Exchange.[7] These procedures incorporate and rely upon existing CBOE surveillance procedures governing equities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition. The CBOE believes that the proposed rule change will enhance competition for the listing and trading of IPSs and similar securities that are currently listed and traded on the Amex.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. 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 20549–0609. 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

Exchange pursuant to Section 19(b) of the Act. Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission, on April 25, 2000.

[7] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998) (noting that CBOE surveillance procedures for the trading of IPRs, which incorporate and rely upon existing CBOE surveillance procedures governing equities, were adequate under the Act).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 Exchange. All submissions should refer to File No. SR–CBOE–00–11 and should be submitted by June 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds, for the reasons set forth below, that the proposed rule change is consistent with the requirements of section 6 of the Act [10] and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.[11] Specifically, the Commission finds that the proposed standards governing the listing and trading of IPSs, and, in particular, the IPSs Fund on the S&P 100 Index, will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating or to a large extent representing the performance of several portfolios of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[12]

On January 26, 1998, the Commission approved the listing and trading on the CBOE of IPRs, securities issued by a unit investment trust that seek to provide investment results that correspond generally to the price and yield performance of a specified index.[13] The proposed IPSs are similar to IPRs except that IPSs are issued by a Fund instead of a unit investment trust. The Commission believes that the proposal to list and trade IPSs, and specifically the Fund based on the S&P 100 Index, will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. IPSs will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and, (3) reduce transactions costs for trading a portfolio of securities.

Although IPSs are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these IPSs is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these IPSs is based on a portfolio of securities.

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of IPSs. Under CBOE rules, IPSs are subject to the full panoply of rules governing the trading of equity securities on the CBOE, including, among others, rules and procedures governing the priority, parity and precedence of orders, responsibilities of all types of market-makers, trading halts, disclosures to members, margin requirements, and customer suitability requirements. Further, the Commission notes that the CBOE will use surveillance procedures that incorporate and rely upon existing CBOE surveillance procedures governing equities, and the Commission has found in the past that these procedures are adequate under the Act.[14] In addition, the rules we are approving today contain specific listing and delisting criteria for IPSs that will help to ensure that the markets for IPSs will be deep and liquid to allow for the maintenance of fair and orderly markets. The Commission believes that these criteria should serve to ensure that the underlying securities of an IPSs series are well capitalized and actively traded, and that new series of IPSs do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has designated that a minimum of two creation units, approximately 100,000 shares, will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the IPSs in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and distributing capital gains, if any, are characteristics of IPSs that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market pursuant to section 6(b)(5) of the Act.[15]

Furthermore, the Commission believes that the Exchange's proposal to trade IPSs in minimum fractional increments of 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in IPSs.

The Exchange represents that the Reporting Authority will disseminate for each Fund of IPSs an estimate, updated every 15 seconds, of the value of a share of each Fund. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each Fund.[16]

The Commission also believes that the CBOE has developed adequate policies regarding trading halts in IPSs. Specifically, the Exchange would halt trading in IPSs if the circuit breaker parameters under CBOE Rule 6.3B were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in IPSs, the CBOE could consider factors such as those set forth in CBOE Rule 24.7, including: (1) Whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more the applicable current index group value; or (2) whether other unusual conditions or circumstances detrimental to the

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78(f)(b).

[13] *See supra*, note 4.

[14] *See* Securities Exchange Act Release No. 39581 (January 26, 1998), 63 FR 5579 (February 3, 1998).

[15] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

maintenance of a fair and orderly market are present.

In addition, the Commission believes that the IPSs proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading IPSs. All investors in IPSs will receive a prospectus prior to or concurrently with the confirmation of a transaction therein, including investors purchasing in secondary market transactions on the Exchange. The prospectus should address the special terms and characteristics of the particular IPSs Fund, including a statement regarding their redeemability and method of creation, and a statement that the trading prices of IPSs on the Exchange may differ in varying degrees from their daily NAVs and can be affected by market forces such as supply and demand, economic conditions, and other factors.[17]

Furthermore, the Commission notes that prior to the commencement of trading of a series of IPSs, the Exchange will distribute to Exchange members an Information Circular calling attention to characteristics of the specific Fund and to applicable Exchange rules, such as trading halt rules. The circular will inform members of their responsibilities with respect to transactions in such IPSs and of their responsibility to deliver a prospectus to all investors purchasing IPSs. The circular will also note that IPSs are not individually redeemable, but must be redeemed in Creation Units only.

The Commission is approving in general the CBOE's proposed listing standards for IPSs, and, specifically, the listing of IPSs of a Fund based on the S&P 100. The Commission specifically notes that, notwithstanding approval of the listing standards for IPSs, other similarly structured products, including IPSs based on other indices, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed prior to contacting Division staff. In addition, the CBOE may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is based on Amex Rule 1000A *et seq.* and is similar to CBOE rules relating to IPRs, both of which the Commission approved in the past.[18] The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to section 19(b) of the Act.[19] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. In view of these factors, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act, to approve the proposal today.

V. Conclusion

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–00–11) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13954 Filed 6–2–00; 8:45 am]

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[17] Telephone conversation between Kevin An, Attorney, Schiff, Hardin & Waite, and Heather Traeger, Attorney, Division, Commission; Susie Cho, Attorney, Division, Commission, on May 22, 2000.

[18] *See supra* notes 3 and 4.

[19] 15 U.S.C. 78s(b)

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42835; File No. SR–CBOE–99–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Rights for Firms Crossing Orders.

May 26, 2000.

I. Introduction

On March 18, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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 its rule governing the crossing of equity option orders by floor brokers, to give the member firm from which an order originates (''originating firm'' a participation right in trades that are proposed to be crossed in certain circumstances. Notice of the proposed rule change was published for comment in the **FEDERAL REGISTER** on July 16, 1999.[3] The Commission received four comment letters regarding the proposal.[4] On October 4, 1999, April 11, 2000, and May 25, 2000, the CBOE filed Amendment Nos. 1, 2, and 3, respectively, to the proposal.[5] This order approves the proposed rule change, accelerates approval of Amendment Nos. 1, 2, and 3, and solicits comments from interested persons on those amendments.

II. Description of the Proposal

CBOE Rule 6.74 sets forth the procedures by which a floor broker holding a customer order (''original order'') may cross it with either: (i) Another customer order or orders from the same originating firm: or (ii) a contra side order provided by the originating firm from its own proprietary account (''facilitation order'').[6]

Under CBOE Rules 6.74(a) and (b), a floor broker seeking to cross buy and sell orders for the same options series must first bring the transaction to the trading floor and request a market from the trading crowd. After receiving bids and offers from the crowd, the floor broker must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the market makers in the crowd are given the opportunity to take all or part of the transaction at the proposed price.[7]

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to take part of the order, however, the crowd has precedence and the floor broker may cross only that amount remaining after

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41609 (July 8, 1999), 64 FR 38494.

[4] *See* Section III below for a description of the comment letters.

[5] The substantive modifications made by these amendments are incorporated in the description of the proposal in Section II below, and are further discussed in Section IV.

[6] Under the CBOE's rules, facilitation orders may be provided only to cross the orders of public customers. *See* CBOE Rule 6.74(b). This same stipulation is retained under the proposed rule change.

[7] In the case where the floor broker is proposing to cross two customer orders, the crowd may take all or part of either customer order. In the case where the floor broker is seeking to effect a facilitation cross, the crowd may take all or part of the customer order.

the crowd has taken its portion. If the crowd wants to take the entire order, the floor broker will not be able to cross or facilitate any part of the order.

The proposed rule change, adding new paragraph (d) of Rule 6.74, will apply to transactions in equity options,[8] and will pertain to orders of a certain minimum size. The qualifying size of orders eligible for the proposal's new rule will be determined by the appropriate Floor Procedure Committee of the Exchange, but cannot be less than 50 contracts.[9] The proposed rule change will entitle the floor broker, under certain conditions, to cross a specified percentage of the original order on behalf of the originating firm, before market makers in the crowd can participate in the transaction. The percentage of the floor broker's guarantee will depend upon whether the price at which the order is ultimately traded is at the crowd's best bid or offer in response to the broker's initial request or at an improved price.

First, in contrast to the provisions of current rule 6.74, the floor broker will be granted a right to cross even at a price that does not improve upon the best bid or offer provided by the crowd in response to his initial request for a market. The proposed rule change provides that where the trade takes place *at* the market provided by the crowd, all public customer orders in the book and those represented in the trading crowd at the time the market was established [10] must first be satisfied. Once these public customer orders are satisfied, the floor broker will be entitled to cross 20% of the contracts remaining in the original order.

The proposed rule change further provides that if the original order is traded at a price *between* the best bid and offer provided by the crowd in response to the floor broker's initial request for a market—*i.e.,* where the floor broker proposes the cross at a price that improves the crowd's market, and the crowd then wants to take part or all of the order at the improved price—the floor broker will be entitled to priority over the crowd to cross 40% of the contracts.

As under existing procedures codified in paragraphs (a) and (b) of Rule 6.74, the floor broker seeking to execute a cross under proposed paragraph (d) will be required, when initially asking for a market in the option series, to make all persons in the trading crowd, including the Order Book Official, aware of his request.

Proposed paragraph (d)(i) provides, in addition, that once the trading crowd has provided a market, that market will remain in effect until (a) a reasonable amount of time has passed; (b) a significant change has occurred in the price of the underlying security of the option; or (c) the market is improved.[11] In case of a dispute, ''significant change'' will be determined on a case-by-case basis by two Floor Officials, based upon the extent of recent trading in the option and the underlying security and any other relevant factor.

In the case of a multi-part or spread order, one leg alone of the order will need to meet the eligible size requirement to qualify for the provisions of the proposed rule change.

In the case of a facilitation cross, the facilitating firm will be required to disclose on the order ticket for the public customer order all terms of the order, including any contingency involving, and all related transactions in, either options or underlying or related securities. The floor broker will be required to disclose all securities that are components of the public customer order before requesting bids and offers for the execution of all components of the order.[12]

If the same member organization of the Exchange is both the originating firm and the Designated Primary Market Maker (''DPM'') for the class of options in which the transaction takes place,[13] and the floor broker acting on behalf of the firm takes advantage of the crossing right provided by the proposed rule change, the firm will not be entitled to any participated in the trade on the guaranteed percentage ordinarily granted to DPMs pursuant to CBOE Rule 8.80 (''DPM participation rate'').[14] In this instance the firm will be limited to its guaranteed participation under Rule 6.74.

If the DPM in the options class is not the same member organization as the originating firm, and the trade takes place at the DPM's principal bid or offer, the DPM will be entitled to participate in a percentage of the contracts remaining after relevant public customer orders have been filled and the originating firm's crossing rights have been exercised. The percentage that the DPM will receive is determined by reference to the established DPM participation rate—subject to limitation. If the floor broker crosses the full 20% of the originating firm's entitlement, the number of contracts guaranteed to the DPM may not exceed 25% of the remaindere of the order after the originating firm has taken its share.[15] If the floor broker does not cross 20%, the DPM may be entitled to more, but in no case will the DPM be guaranteed a percentage that, when combined with the percentage crossed by the floor broker, exceeds 40% of the original order (after relevant public customer orders have been satisfied).[16]

The proposed rule change makes clear, however, that it is not intended to prohibit either a floor broker or DPM from trading more than their percentage entitlements if the other members of the trading crowd do not choose to trade with the remainder of the order.[17]

The proposal further makes clear, in accordance with Rule 8.80, that if the trade takes place at a price other than that of the DPM's principal bid or offer, the DPM would not be entitled to any guaranteed participation.[18]

The proposed rule change also provides that the members of the crowd who establish the market in response to the floor broker's initial request will have priority over all other orders that were not represented in the crowd at the time that market was established, except for orders that improve upon those

[8] The CBOE has also filed a related rule change regarding facilitation crosses in index options. *See* Securities Exchange Act Release No. 41743 (August 13, 1999), 64 FR 45578 (August 20, 1999)(File No. SR–DBOE–99–35).

[9] *See* Amendment No. 2 to the proposed rule change, concerning proposed paragraph 1 of Rule 6.74(d). The original proposal would have restricted the eligible order size to 500 contracts or more.

[10] *See* Amendment No. 3, concerning subsection 6.74(d)(ii).

[11] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(i).

[12] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(iv).

[13] The same provision would apply if the originating firm or the DPM or both are nominees of the same member organization. Telephone conversation between Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and Gordon Fuller, Special Counsel, and Ira Brandriss, Attorney, Division of Market Regulation (''Division''), the Commission, on May 22, 2000.

[14] *See* CBOE Rule 8.80(c)(7); Securities Exchange Act Release No. 42190 (December 1, 1999), 64 FR 68706 (December 8, 1999) (establishing the DPM guarantee at 30% when the trade occurs at the DPM's principal bid or offer).

[15] Thus, if the original order was for 1,000 contracts, and the originating firm, crossing at the best bid or offer price given by the crowd, took its full share of 200 contacts (20%)—assuming no public customer orders were represented in the book or in the crowd—the DPM would be entitled to 200 contracts (25% of the remaining 800) and the total combined participation guarantees of the originating firm and the DPM would be limited to 400 contracts, or 40% of the original order.

[16] *See* Amendment No. 2, concerning proposed subsection 6.74(d)(v).

[17] *Id.*, concerning proposed subsection 6.74(d)(vii).

[18] *Id.*, concerning proposed subsection 6.74(d)(v). Thus, the DPM participation right is not a concern where the originating firm receives a 40% crossing right, because that right is granted only when the trade occurs between the best bid and offer given by the crowd, which is by definition at a price other than the DPM's principal bid or offer.

quotes. Further, a floor broker holding a customer order and either a facilitation order or a solicited order and who makes a request for a market will be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order and the other order will also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.[19]

III. Summary of Comments

The Commission received four comment letters regarding the proposed rule change. One commenter, the Amex Options Market Maker Association (''OMMA''),[20] opposed the proposal. Three commenters—Morgan Stanley & Co. (''Morgan Stanley''),[21] Goldman, Sachs & Co. (''Goldman Sachs''),[22] and Credit Suisse First Boston Corporation (''CSFB'') [23]—supported it.

The OMMA stated that the proposed rule change would harm investors because when floor brokers representing customer orders are guaranteed the right to cross a fixed percentage of those orders, they will no longer attempt to seek the best price possible for those orders. The OMMA further maintained that the auction market would be cut short under the proposed rule change, and that the participation guarantees granted to upstairs firms will remove the incentive for market makers to improve prices.

CSFB and Morgan Stanley stated that the proposal would contribute to more efficient markets and the narrowing of spreads for listed options. The guaranteed participation, they maintained, would provide an incentive for originating firms to find contraparty customers or to commit their own capital at a price between the spread. They also argue that it would correct an inequity under current rules that allows market makers to take 100% of a proposed cross away from an originating firm.

Goldman Sachs adds that, under the proposal, the crossing price would of necessity be fair to the customer, because the originating firm is guaranteed a participation right only for a cross at or better than the quoted market. Moreover, it noted, firms would have an incentive to bring liquidity to the market and market makers would have an incentive to quote tighter markets in order to increase their participation.

The commenters who supported the proposal also maintained that it would enable the CBOE to compete effectively with other exchanges.

The CBOE responded to OMMA's comments in Amendment No. 1 to the proposal. The CBOE stated that, contrary to suggestions made by the OMMA, market makers would always have an opportunity to improve the market under the proposed rule change, and a cross could never be executed outside the best quoted market.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly those of section 6(b)(5) [24] and section 6(b)(8) [25] of the Act, and the rules and regulations thereunder.[26] The Commission believes that the proposal will enable the CBOE to better compete with other options exchanges in attracting the order flow of broker-dealer firms seeking to cross and facilitate customer orders, without adversely impacting the prices those orders receive.

The Commission finds that the CBOE's proposal to grant participation rights, under certain conditions, to member firms that execute crossing transactions on the Exchange is reasonable. Currently, CBOE market makers have priority rights for the full size of a customer order over the firm that brings a crossing transaction to the CBOE floor, as long as the market makers are willing to trade at the proposed price.

While the proposal entitles the originating firm to a specified percentage of a crossing transaction when executed at the trading crowd's best bid or offer, it does not eliminate the crowd's ability to trade with a portion of the order proposed to be crossed, or even so substantially reduce that ability so as to raise serious concern that the proposal would reduce price competition by the crowd. Moreover, the Commission believes that the proposal may contribute to better prices for crossing transactions. Specifically, it provides an incentive for upstairs firms to improve on the prices quoted by the crowd by offering these firms a greater participation in the trade when they better the crowd's price. In addition, as the CBOE represents, market makers will always have an opportunity to improve the market and compete for a greater portion of the trade.

In evaluating the proposed rule change, the Commission considered, among other matters, whether the CBOE's proposal to guarantee that an originating firm could cross up to 40% of an order would reduce the incentive of crowds to compete for orders, and thus impair the price discovery mechanism of the Exchange's market.

In its recent approval of the application of the International Securities Exchange (''ISE'') for registration as a national securities exchange, the Commission discussed the same concern with respect to the ISE's proposed ''facilitation mechanism,'' a system designed to effect a type of facilitation guarantee in an electronic context. The Commission wrote:

> It is difficult to assess the precise level at which guarantees may begin to erode competitive market maker participation and potential price competition within a given market. In the future, after the Commission has studied the impact of guarantees, the Commission may need to reassess the level of these guarantees. For the immediate term, the Commission believes that 40% is not clearly inconsistent with the statutory standards of competition and free and open markets.[27]

By the same token, the Commission believes that the CBOE's proposed rule change, which allocates no more than 40% of an order to the firm seeking to effect a cross, is not inconsistent with the statutory standard. The Commission notes, moreover, that for those crossing transactions in which a DPM is entitled to an allocation in addition to the proposed allocation for the originating firm, the CBOE has included a provision

[19] *See* Amendment Nos. 2 and 3, concerning proposed subsection 6.74(d)(vi).

[20] Letter from Daniel Mintz, Chairman, Amex Option Market Makers Association, to the Securities and Exchange Commission, dated May 28, 1999 (resubmitted with technical clarification, August 19, 1999).

[21] Letter from Robin Roger, Principal and Legal Counsel, Morgan Stanley & Co., to Jonathan G. Katz, Secretary, Commission, dated August 9, 1999.

[22] Letter from Mark A. Zurack, Managing Director, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated August 27, 1999.

[23] Letter from Raymond J. Dorado, Director and Counsel, Legal and Compliance Department, Credit Suisse First Boston Corporation, to Jonathan G. Katz, Secretary, Commission, dated September 30, 1999.

[24] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[25] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

to limit the combined allocations awarded to the originating firm and the DPM an aggregate of no more than 40% of the order.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides additional representations concerning the operation of the proposal and its rationale, and responds to concerns raised by the OMMA. Amendment No. 1 made only a minor change in the text of the proposed rule change for purposes of clarification.[28]

Amendment No. 2, among other things, modifies the proposed rule change by reducing the minimum size of orders to which it will be applicable, from 500 to 50 contracts. The Commission has already approved the facilitation mechanism of the ISE, which guarantees 40% of orders to facilitating firms for order sizes of 50 or more contracts.[29] Thus, the reduction in the size requirement in the CBOE proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE and the CBOE, and will allow the CBOE to compete without disadvantage for facilitation orders.[30]

Amendment No. 2 further adds the stipulation that the combined guarantees of the firm and the DPM may not exceed 40% of the order, thus limiting allocations to a percentage that the Commission has previously found consistent with the Act.

Amendment No. 2 also clarifies the period that the market established by the crowd in response to the floor broker's initial request will remain in effect.[31] It further established the priority of crowd members who responded to the initial request for a quotation over orders that were not represented in the crowd at the time the market was established (unless those orders improve the price), as well as the priority of any unfilled portion of the crossing order held by the floor broker. These aspects of the amendment constitute appropriate and necessary clarifications of procedures and priority rights under the proposed rule change.

Amendment No. 2 further adds disclosure requirements for facilitation crosses transacted under the proposed rule change, consistent with disclosure requirements for facilitation crosses transacted under current rules. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment Nos. 2 and 3 set forth explicitly that the crossing guarantee applies only after all public customer orders on the limit order book and those represented in the trading crowd at the time the market was established have been satisfied. This aspect of the amendment thus limits the new entitlement granted to floor brokers under the proposed rule change, preserving priority for public customer orders.

Amendment No. 3 additionally adds language to the proposed rule text to clarify that public customer orders on the limit order book will always have priority over members of the trading crowd who established the market; that those members of the crowd will have priority over non-customer orders as well as public customer orders on the floor that were not represented at the time the market was established; and that the crowd will not have priority over any order—customer or non-customer—that improves the market. These changes were made for the purposes of clarity and consistency and thus strengthen the proposed rule change.

Amendment No. 3 also provides that the Floor Procedure Committee will determine the size requirement for orders to be subject to the crossing guarantee on a class by class basis. In the Commission's view, this provision will afford the Exchange greater flexibility in determining when it is appropriate to provide participation rights to firms seeking to cross orders, and thus strengthens the proposed rule change.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)[32] and 19(b)(2)[33] of the Act to accelerate approval of Amendments No. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether Amendment Nos. 1, 2, and 3 are 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 20549–0609. 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 CBOE. All submissions should refer to File No. SR–CBOE–99–10 and should be submitted by June 26, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–CBOE–99–10), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13955 Filed 6–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42823; File No. SR–ISE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Authority to Grant Exemptions From ISE Rule 805

May 25, 2000.

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 May 24, 2000, the International Securities Exchange LLC (''ISE'' or ''Exchange'')

[28] The change was intended to clarify when the provisions of subparagraphs (a) and (b) of CBOE Rule 6.74 apply, and when new paragraph (d) applies. The language was subsequently modified further to the same end by Amendment No. 2.

[29] See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

[30] Although the ISE mechanism operates only for facilitation crosses, the Commission's grounds for approving the ISE's facilitation cross guarantee apply equally to the CBOE's proposal, which applies to both customer-to-customer and facilitation crosses.

[31] *See* text accompanying note 9, *supra.*

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 by the ISE. 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 proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rule 805 to authorize the Exchange to grant exemptions from certain restrictions on market makers placing orders in other than their assigned options. This exemptive authority would be in place only until the Exchange opens all ten of its options groups for trading, or for one year from the date the Exchange commences operations, whichever should occur first. The text of the proposed rule change is below. Proposed additions are in italics.

Rule 805. Market Maker Orders

(a) and (b) No changes.

(c) Exemptive Authority. Until the earlier of (1) one year from the date on which the Exchange commences operations or (2) the date on which the Exchange opens all options Groups for trading, an Exchange official designated by the Board may grant market makers exemptions from the requirements of subparagraphs (b)(2) and (3) of this rule, subject to the following:

(i) If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;

(ii) If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;

(iii) Any exemption would be conditioned on the member performing market maker functions in the classes they trade;

(iv) An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and

(v) No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is filing with the Commission, the ISE 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 III below. The ISE 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

Subparagraphs (b)(2) and (3) of ISE Rule 805 contain the following ''Volume Limitation'': Primary Market Makers (''PMMs'') can execute no more than 10 percent of their aggregate volume outside of their assigned options; and Competitive Market Makers (''CMMs'') can execute no more than 25 percent of their aggregate volume outside of their assigned options. The Exchange assigns market makers to specific option ''Groups'' and will ''roll out'' its trading in stages, beginning with a limited number of Groups, and with a limited number of options in each Group. During the ''roll out,'' the Exchange will open additional Groups for trading, while also commencing trading in additional securities in open Groups. The Exchange anticipates having all options open for trading within one year from the date it commences operations.

Due to this roll out schedule, it is likely that some ISE market makers will be fully connected to the ISE and prepared to begin trading before the Exchange opens their assigned Groups(s) for trading. As currently in effect, ISE Rule 805 would prohibit these market makers from doing any trading, since, by definition, 100 percent of their trading would be in options to which they are not assigned. The Exchange believes that prohibiting these firms from conducting any trading is inappropriate and would unnecessarily restrict liquidity on the Exchange.

To address this concern, the proposed rule change would authorize an Exchange official with delegated authority by the board to grant market makers exemptions from the Volume Limitations during the roll out period. The Exchange's authority to grant exemptions would terminate when all groups are open for trading (even if the Groups are not fully populated with the full complement of options) or one year from the date on which the Exchange commences operations, whichever should occur first. The Exchange will grant these exemptions on a case-by-case basis, tailored to the individual situation of each market maker applying for an exemption. The proposed rule includes the following guidelines in granting exemptions pursuant to this authority:

- If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;
- If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;
- Any exemption would be conditioned on the member performing market maker functions in the classes they trade;
- An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and
- No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.

The Exchange believes that this narrowly-crafted exemptive authority will help provide additional liquidity to the Exchange during the roll out period. It also will encourage market makers to begin trading on the exchange as soon as they are connected and authorized to trade, even if their assigned Group(s) is not yet open to trading.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section

6(b)(5)[3] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited,and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 Exchange. All submissions should refer to File No. SR–ISE–00–05, and should be submitted by June 26, 2000.

IV. Commissions's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the ISE's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[4] and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.[6]

Section 6(b)(5) of the Act[7] requires an exchange to promulgate rules designed to prevent fraudulent and manipulative acts and practice, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] because the proposal is designed to enhance liquidity on the Exchange during its start-up phase.

The Commission finds that the proposal is narrowly-tailored, and provides reasonable standards and guidelines to be applied in granting exemptions pursuant to this authority. In particular, the Commission notes that the Exchange's decisions to grant exemptions would be made on a case-by-case basis, and any exemption granted would be limited to a term of no longer than one month. In addition, the guidelines require that a market maker's exemption from the Volume Limitations would end as soon as the Group to which the market maker is assigned is opened for trading, even if only one options class in that Group has been listed at that time. Similarly, the exemption granted to a market maker holding more than one ISE membership would be reduced when one or more of its assigned Groups are opened for trading.

The Commission also believes that the proposal may encourage market makers to begin trading on the Exchange as soon as they are authorized and able to do so, which in turn, may benefit investors by providing liquidity to the market. The Commission notes that the proposed standards require market makers receiving an exemption to perform market making functions in the classes in which they trade, which should also enhance the liquidity of the market. Because of these potential improvements to the market, the Exchange's authority to grant exemptions on a case-by-case basis tailored to the individual situation of each market maker applying for an exemption, and the limited duration of the grant of exemptive authority, the Commission finds that the proposal is both reasonable and consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Having found that the proposal is both reasonable and consistent with the Act, and that it should result in enhancements to the marketplace during the Exchange's start-up phase, the Commission believes it would be counterproductive to delay the implementation of the proposal. Specifically, the Commission notes that the ISE intends to commence trading on May 26, 2000, in a limited number of options classes. The proposal will permit ISE PMMs and CMMs that are ready to begin trading, but have been assigned to Groups that are not yet open for trading, to participate in ISE's market, thereby increasing liquidity in the market. The Commission finds, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 6(b)(5) of the Act.[9]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–00–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13958 Filed 6–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42825; File No. SR–ISE–00–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange LLC Relating to the Exposure of Orders on the Exchange

May 25, 2000.

I. Introduction

On February 25, 2000, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78f.

[5] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the exposure of orders on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2000.[3] The Commission received three comment letters regarding the proposal.[4] On March 30, 2000, the ISE amended the proposed rule change.[5] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to amend ISE Rule 717 to reduce from two minutes to 30 seconds the amount of time that Electronic Access Members (''EAMs'') are required to expose agency orders on the Exchange before executing them as principal or executing them against a solicited order. According to the ISE, its order exposure requirements are intended to assure that agency orders have an opportunity to interact on the Exchange before they are executed. The Exchange proposes to reduce the exposure time because it believes that the objective of the exposure rule can be satisfied by a 30 second exposure period.

III. Summary of Comments

The Commission received three comment letters on the proposal.[6] These commenters opposed ISE's proposal to reduce the order exposure time from two minutes to 30 seconds.[7] Commenters argued that the proposed reduction in response time would make it easier for ISE members to execute as principal orders for less than 50 contracts without meaningful opportunity for price improvement by competitors.[8] The commenters contend that this would undermine the intended purpose of having customers' orders reasonably exposed to other trading interest before being executed by the facilitating ISE member.[9] Two commenters agreed that two minutes is an appropriate time frame for this purpose, but that a 30 second exposure time would make it unlikely that interested market participants would have sufficient time to gauge their risk exposure in other markets and related positions, and reveal on the ISE their true ''best'' price.[10]

Commenters stated that this proposal encourages internalization because it allows an EAM to execute orders as principal if it utilizes the facilitation mechanism of ISE Rule 716(d) or has been bidding or offering on the ISE for 30 seconds. Commenters noted that an EAM could easily internalize orders by, upon receiving a customer order, holding that order until the EAM has posted a bid or offer at this intended crossing price for 30 seconds, then executing the order as principal, effectively subverting the intent of the exposure period.[11]

In response to commenters' objections to the proposed reduction in the exposure period from two minutes to 30 seconds, the ISE states that it believes 30 seconds is a sufficient time for participants in the ISE market to respond to an order, noting that the Commission has approved exposure times of as few as 15 seconds for certain equity exchanges.[12] With regard to the sufficiency of the proposed 30 second exposure time, the ISE contends that a 30 second order exposure time is especially appropriate in light of the fact that floor-based exchanges have no limitation on how long a crowd must interact with a proposed crossing of orders, nor do floor-based exchanges have safeguards preventing a firm from negotiating with the crowd to execute against any and all of its customer orders, regardless of size.[13] ISE states that, because it is an electronic marketplace, it must define some order exposure time period.[14]

In response to the commenters' claim that members can subvert the 30 second requirement, ISE argues that the only exception to the 30 second exposure rule is the situation in which an EAM had disseminated proprietary trading interest on the ISE for at least 30 seconds prior to the customer order. In this case, according to ISE, the firm has disseminated trading interest, available to all customer orders, at the stated price, thus putting itself at risk to the public. Accordingly, ISE believes that execution of the EAM's own customer orders would not deprive the public of the opportunity to trade at the same prices.[15] Moreover, ISE notes that a broker would not be permitted, under its rules, to simply delay entering an order into the system in order to circumvent the exposure rule.[16]

In response to the commenters' internalization claims, ISE notes that that there is little opportunity for an EAM to be assured of executing against its own customer orders. Once customer orders are entered into the system, those limit orders that do not improve upon the ISE best bid or offer are placed into the ISE's electronic limit order book last in time priority behind any existing customer orders at the same price. Thus, the ISE argues, a given EAM would have no way of knowing whether the resulting increase in the best bid or offer (assuming the order matched the ISE best bid or offer) was due to its' customer's order, as opposed to other customer orders or interest from non-customers.[17] In addition, the ISE maintains that its proposed amendment to ISE Rule 717(d) addresses the only real opportunity for internalization in its system: The narrow case where an EAM has a limit order that improves upon the ISE best bid or offer or a market order that it is willing to execute at an improved price. The ISE argues that the proposed 30 second delay required by its amendment will remove the informational advantage that makes internalization profitable and will provide other market participants an opportunity to compete for such orders.[18]

Discussion

After careful review, the Commission find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42475 (February 29, 2000), 65 FR 11818.

[4] *See* letters to Jonathan G. Katz, Secretary, SEC, from Holly H. Smith, Sutherland, Asbill & Brennan LLP, dated March 24, 2000 (''SA&B Letter''); Peter J. Chepucavage, Fulbright & Jaworski L.L.P., dated March 28, 2000 (''Phlx Letter''); and Charles J. Henry, President and Chief Operating Officer, Chicago Board Options Exchange, dated March 31, 2000 (''CBOE Letter'').

[5] *See* letter from Katherine Simmons, Vice President and Associate General Counsel, ISE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation, SEC, dated March 28, 2000 (''Amendment No. 1''). In Amendment No. 1, the ISE made minor technical changes to ISE Rule 717, replacing section headings ''(a)'' and ''(b)'' with ''(d)'' and ''(e),'' respectively. Because Amendment No. 1 did not change the substance of the proposal, there was no need to publish it in the **Federal Register**.

[6] *See* note 4, *supra*.

[7] The Commission notes that commenters also raised issues related to ISE's system that were outside of the scope of the current ISE proposal, several of which were addressed in the Commission's order approving ISE's registration as a national securities exchange. *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). Consequently, this order addresses only comments regarding those issues presented by the current proposal.

[8] *See* SA&B Letter; Phlx Letter; CBOE Letter.

[9] *Id.*

[10] *See* SA&B Letter; Phlx Letter.

[11] *See* SA&B Letter; Phlx Letter; CBOE Letter.

[12] *See* letter to Jonathan G. Katz, Secretary, SEC, from Katherine Simmons, Vice President and Associate General Counsel, ISE, dated May 19, 2000 (''ISE Response Letter'').

[13] *See* ISE Response Letter.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

thereunder applicable to a national securities exchange.[19] In particular, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.[20]

Under Section 6(b)(5) of the Act,[21] a registered national securities exchange must have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to 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 Commission finds that ISE's proposed amendments to ISE Rule 717(d) and (e) reducing the exposure time (*i.e.*, the amount of time EAMs are required to expose agency orders on the Exchange before executing them as principal or against a solicited order) from two minutes to 30 seconds are consistent with Section 6(b)(5) of the Act.[22] The Commission recognizes that, on floor-based exchanges, there are no rules that govern the extent to which a given trading crowd has an opportunity to interact with a proposed crossing of orders. Because the ISE operates a unique electronic options market, it must define an order exposure time period. The Commission finds that a 30 second exposure period is a reasonable time frame for participants in ISE's market to assess market conditions and their own trading interest, and to allow a reasonable opportunity for price improvement from interested participants. The Commission finds that a 30 second exposure period strikes a reasonable balance between maintaining liquidity and efficiency in the ISE market and preventing impediments to a free and open market, while providing the appropriate safeguards for investors and the public.

In determining that a 30-second exposure period is reasonable, the Commission has considered carefully the commenters' concern that market makers might be able to subvert the 30 second exposure period by posting bids or offers for a very short period of time, and arranging to receive agency orders simultaneously when they are executable against the market maker as principal, or against other agency orders held by the market maker.[23] In such a scenario, EAMs allegedly would pre-screen order flow, and hold orders until they can be internalized, denying the order any exposure in the market and the opportunity for price improvement. The Commission is not persuaded by this argument. The ISE allows for only one exception to the 30 second exposure period, in the scenario where an EAM has previously disseminated proprietary trading interest on the ISE for at least 30 seconds prior to receipt of a customer order. Under this limited exception, a firm will have placed itself ''at risk'' to the public by having disseminated trading interest available to all customer orders at a stated price. ISE Rule 717(d) states that a member must have been bidding or offering on the Exchange for *at least* 30 seconds prior to receiving an agency order that is executable against such bid or offer. The Commission finds that an EAM's execution of its own customer order under this particular scenario would not deprive the public of the opportunity to trade at the same price.

The Commission also has considered carefully the commenters' concerns about the potential for internalization of order flow where there is a 30 second exposure period, and finds that the proposal provides sufficient safeguards against such activity. The ISE's system is designed to ensure that, once customer orders are entered into the system, any limit orders that do not improve upon the ISE best bid or offer automatically are placed into the ISE's electronic limit order book last in time priority behind any existing customer orders at the same price. Therefore, an EAM has no guarantee that it will be able to trade against its agency orders. Because ISE's system automatically provides reasonable safeguards to prevent EAMs from executing against their own customer orders, the Commission finds that a 30 second exposure period does not pose an unreasonable risk of increasing the internalization of order flow. For these reasons, the Commission finds that ISE's proposal is consistent with Section 6(b)(5) of the Act.[24]

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–ISE–00–04), as amended, is approved.

Margaret H. McFarland.

Deputy Secretary.

For the Commission, by the Division of Market Regulation, pursuant to delegated authorty.[26]

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[19] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] *Id.*

[23] *See* SA&B Letter at 8.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42847; File No. SR–NASD–00–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Include UTP Exchanges in the Nasdaq National Market Execution Service

May 26, 2000.

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 May 25, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to provide for the inclusion of national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges (''UTP'') in the automatic-execution functionality of the Nasdaq National Market Execution System (''NNMS''). Below is the text of the proposed rule change. Proposed deletions are in brackets and proposed addition are in italics.

4720. SelectNet Serve

(a)–(b) No Change

(c) Prohibition Regarding the Entry of Certain Preferenced Orders to Nasdaq National Market Execution System Market Makers

(i) No member [may] *shall* direct a SelectNet preferenced order to a Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

National Market Execution System (''NNMS'') market maker including that market maker's Agency Quote (as defined in NASD Rule 4613)*, a Full Participant ECN (as defined in NASD Rule 4701), or a UTP Exchange that participates in the automatic execution functionality of the NNMS,* unless that order is designated as:

A[(i)] an ''All-or-None'' order (''AON'') and is at least one normal unit of trading (*i.e.* 100 shares) in excess of the displayed quote to which the preferenced order is directed; or

B[(ii)] a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal until of trading in excess of the displayed quote to which the preferenced order is directed.

(ii) The prohibition of this paragraph shall not apply to*:*

(A) preferenced order sent by a UTP Specialist *that does not participate in the automatic execution functionality of the NNMS,* to an NNMS market maker; or

(B) [to] preferenced order sent by an NNMS market maker to a TUP Specialist *that does not participate in the automatic execution functionality of the NNMS.*

(iii) For purposes of this rule a ''UTP Specialist'' shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq/NMS/UTP Plan'').

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend the NASD rules governing the NNMS, to enable UTP Exchanges to participate in the automatic execution functionality of the NNMS. Nasdaq represents that currently, the Chicago Stock Exchange (''MWSE'') is the only exchange that trades Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'').

On January 14, 2000, the Commission approved the new NNMS trading platform, which is to be implemented in July 2000.[3] As approved, the NNMS will be an automatic execution system that will serve as the primary trading platform for Nasdaq National Market securities. Under the NNMS rules, participation in the NNMS will be mandatory for Nasdaq market makers, and those market makers will be required to participate in the automatic-execution functionality of the system.

ECNs will have two options for participating in NNMS. Specifically, ECNs can choose to be Order-Entry ECNs or Full-Participant ECNs. Order-Entry ECNs will participate in Nasdaq in substantially the same manner as ECNs do today. That is, market participants will be able to access Order Entry ECN quotes via the SelectNet linkage and to send preferenced SelectNet messages of any size (up to 999,999 shares) to such ECNs. The oversized order requirement for a preferenced SelectNet order would not apply to Order Entry ECNs. Order Entry ECNs that want to access other market maker quotes will need to request order-entry capability in NNMS. That is, they will enter orders into NNMS for automatic execution against quotes of market makers and Full Participant ECNs (*i.e.,* those ECNs that choose to accept automatic execution against their quotes). Order Entry ECNs can also send preferenced SelectNet orders to NNMS Market Makers subject to the over-sized order restriction described below.

Full-Participant ECNs will agree to provide automatic execution against their quotes for orders entered into NNMS, similar to market makers. Like Order Entry ECNs, Full-Participant ECNs will use NNMS to obtain automatic execution of orders they send to NNMS Market Makers or other Full-Participant ECNs. Full-Participant ECNs will use SelectNet to deliver liability orders to Order Entry ECNs.

To avoid dual liability, market makers and Full Participant ECNs are only eligible to receive preferenced/directed orders through SelectNet that are either: (1) an ''All-or-None'' orders (''AON'') and at least one normal unit of trading (*i.e.,* 100 shares) in excess of the displayed quote to which the preferenced order is directed; or a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of the displayed quote to which the preferenced order is directed (''Over-Sized Order Requirement''). It is the NASD's view that orders that meet the Over-Sized Order Requirement are not liability orders under the NASD's and Commission's firm quote rule. Thus, the main purpose of the Oversized-Order Requirement is to limit dual liability for market participants that are required to (*i.e.,* market makers), or chose to (*i.e,*, Full Participant ECNs), take automatic execution against their quotes through the NNMS[4] The underlying premise of the NNMS rule change is to establish (in most cases) only one point of (or system for) delivery of a liability order against the quote of a market maker, ECN, or UTP Exchange.

As originally proposed and approved, UTP Exchanges will only receive orders through Nasdaq's SelectNet system. This is because UTP Exchanges have traditionally received orders against their quotes through the order-delivery functionality of SelectNet. Because SelectNet is an order-delivery system—as opposed to an automatic-execution system like the NNMS—UTP Exchanges that receive SelectNet orders must manually respond to the order to complete a trade.

Under the approved NNMS rules (and similar to how SOES currently operates), when UTP Exchanges and/or Order Entry ECNs are alone at the best bid/best offer, the NNMS will stop processing orders that are in the NNMS system and will hold those orders in queue for 90 seconds. During this 90 seconds, the system essentially pauses to see if a market maker or Full Participant ECN will join the inside or the UTP Exchange or Order Entry ECN

[3] *See* Securities Exchange Act Release No. 42344 (Jan 14, 2000), 65 FR 3987 (January 25, 2000).

[4] Such dual liability could occur if a market maker or ECN receives an order through SelectNet to which it owes an obligation under the NASD's and Commission's firm quote rule, and immediately thereafter receives an execution through the NNMS against the same quote.

will drop away from the inside, thereby establishing a new inside market.[5] If after 90 seconds a market maker or Full Participant ECN does not join the inside, the NNMS will return the orders that are in queue and the system will shut down. If during the 90 seconds a market maker joins the inside or establishes a new (better priced) inside, the system resumes automatic-execution processing of orders.

After the Commission approved the NNMS, the MWSE and Nasdaq began discussing the possibility of the MWSE participating in the automatic-execution functionality of the NNMS. Both Nasdaq staff and the MWSE recognized that there could be delays in processing orders if the MWSE is alone at the inside and does not respond, within 90 seconds, to orders delivered to its quote.[6] This could occur if the MWSE is experiencing system problems, is slow to process an order, or if there are delays in Nasdaq systems.[7] Commission staff also raised this concern. In light of the above, Nasdaq is proposing a rule change to permit the MWSE to participate in the automatic-execution functionality of the NNMS.

In the NNMS, the quotes of market makers, Full Participants ECNs, and UTP Exchanges are accessed in general price/time priority. We note that this is unlike the exchange environment where markets are required to sweep the floor before accessing the quotes of a competing exchange. We also recognize that the approach in this filing differs from our proposal in SR–NASD–99–53, regarding the Nasdaq Order Display Facility, where the system would execute against the propriety quotes of UTP Exchanges behind the quotes and orders of Nasdaq market makers, ECNs, and agency interest of UTP Exchange specialists. While we believe that the approach in SR–NASD–99–53 is more appropriate given the precedent established in the listed environment regarding order routing, we are proposing a strict price/time approach in this filing as a short-term solution to the potentially significant and crippling problems outlined above.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in the regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The rule change will eliminate the potential for order queuing or for this system to stop processing orders, when UTP Exchanges are alone at the inside. Thus, the rule change is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–30 and should be submitted by June 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13956 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[5] This pause occurs because UTP Exchange and Order Entry ECN quotes are not reachable through the automatic-execution functionality of the NNMS, but only through the order-delivery portion of the system.

[6] While this is also a concern with ECNs, the concern is substantially smaller because ECNs are required to provide an automated response to SelectNet messages, and, in Nasdaq's experience, they generally respond in 5 second or less to orders presented to their quotes. UTP Exchanges are not under the same explicit obligation.

[7] As an illustration of the potential problem, assume the MWSE is alone at the inside bid of $20 for 1000 shares, Market Maker A enters an order into the automatic-execution functionality of the system, and Market Maker B directs (or preferences) 1,000 shares to the MWSE. No other market maker joins the inside bid of $20; this causes the system to stop processing orders for 90 seconds. Thereafter, the MWSE waits 2 minutes before responding to MMB's directed/preferenced order either by filing or declining the order. (This delay could occur if there are equipment problems at the MWSE, in Nasdaq, or both.) In this instance, the market effectively is held up for 2 minutes and the automatic-execution functionality is shut off (after 90 seconds) because the MWSE did not respond to the direct/preferenced orders within 90 seconds.

[8] The rules clarify that if a UTP Exchange participates in the automatic-execution functionality of the NNMS, orders preferenced to the UTP Exchange's quotes must meet the Oversized Order Requirement. This is to limit the potential for dual liability (described above) for UTP Exchanges. In addition, Nasdaq is proposing non-substantive rule changes to correct drafting errors in the original rule proposal to clarify that orders sent to quotes of Order Entry ECNs are not subject to the Oversized Order Requirement in the rule, while orders sent to Full Participant ECNs are subject to this requirement.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42831; File No. SR–NASD–00–16]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Minimum Listing Requirements for the Inclusion and Maintenance of Open and Closed-End Funds in Nasdaq's Mutual Fund Quotation Service

May 25, 2000.

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 April 4, 2000, the National Association of Securities Dealers, Inc. (''NASD'') through its wholly owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq'') file with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] On May 16, 2000, the Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in Nasdaq's Mutual Fund Quotation Service (''MFQS'') Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6800. MUTUAL FUND QUOTATION SERVICE

(a)–(b) No Change

(c) News Media Lists

(1) (A) An eligible open end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end funds shall be authorized for inclusion in the News Media List released by the Association if it has at least $*60* [100] million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

(2) (A) An authorized open-end fund shall remain included in the New Media List if it has either 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund shall remain included in the News Media List if it has $*30* [60] million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List

An eligible open-end or closed-end fund shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level I Service if *it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:*

(1) the fund has net assets of $10 million or more; or

(2) *the fund* has had two full years of operation; *or*

(3) the investment management firm managing the fund has:

(A) at least one other fund listed on the Mutual Fund Quotation Service that has net assets of $10 million or more; and

(B) at least $15 million in total assets of open-end, closed-end, and/or money-market funds under management.

(e) No Change

* * * * *

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

Nasdaq is proposing to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in the Service. The MFQS was created to collect daily price and related data for mutual funds and money market funds and to disseminate that information to the news media and market data vendors.[5] Currently, the MFQS disseminates the valuation data for over 11,000 funds. This information dissemination process is facilitated by the use of web browser-based technology, which enables funds included in the Service, or the pricing agents designated by such funds, to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[6] The MFQS has two ''lists'' in which a fund may be included—the News Media List and the Supplemental List—and each list has its own initial inclusion requirements.[7] The News Media List also has maintenance/combined inclusion requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors.[8] if a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List thus provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[9]

Nasdaq maintains that the Service provides valuable pricing information for a large portion of funds for which there is significant investor interest. According to Investment Company Institute (''ICI'') data, however, the MFQS is currently only capturing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD filed its proposed rule change on March 31, 2000. On April 4, 2000, the NASD filed Amendment No. 1 that entirely replaced the original rule filing.

[4] *See* Letter from Robert E. Abner, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission (May 16, 2000). Amendment No. 2 corrected a typographical error that appeared in the proposed rule language and clarified that the Mutual Fund Quotation Service includes only 73.8% of the total open-end and closed-end fund population.

[5] *See* Securities Exchange Act Release No. 22264 (July 23, 1985), 50 FR 30899 (July 29, 1985).

[6] *See* NASD Rule 6800.

[7] *See id.*

[8] *See* NASD Rule 7010.

[9] *See* NASD Rule 7090.

pricing information for approximately 73.8% of the total fund population.[10]

In light of the foregoing, Nasdaq proposes to amend the MFQS inclusion criteria for both the Supplemental and News Media List by expanding the universe of funds that are eligible for inclusion in the Service. Nasdaq proposes to lower both the initial and maintenance requirements for closed-end funds to participate in the News Media List. Currently, in order to qualify initially for inclusion in the News Media List, a closed-end fund must have at least $100 million in net assets. To remain in the News Media List, a closed-end fund must maintain at least $60 million in net assets. The proposed rule change would lower the net asset requirement for a closed-end fund to qualify initially for inclusion in the News Media List to at least $60 million in net assets. The net asset requirement for a closed-end fund to remain included in the New Media List would be lowered to at least $30 million.

Nasdaq also proposes to amend the inclusion criteria for the Supplemental List. At the present time, an open-end or closed-end fund qualifies for inclusion in the Supplemental List if the fund either has at least $10 million in net assets or has had two full years of operation. Nasdaq proposes to provide a third alternative means for a fund to be included in the Service. Under this alternative, a fund would qualify for the MFQS if the investment firm that manages the fund has at least one other fund listed on MFQS that has $10 million in assets. In addition, the firm must have at least $15 million from open-end, closed-end, and/or money market funds under management. Nasdaq notes that managed assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least $15 million in fund-related assets.

Nasdaq represents that the proposed rule change would provide daily pricing information to the investing public for funds that have a significant investor interest. In addition, Nasdaq estimates that 2,500 of the 2,800 funds that are not currently eligible for inclusion in the MFQS would qualify under the proposed new standards.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[11] and Section 11A[12] of the Act. Section 15A(b)(6)[13] of the Act requires the rules of a registered national securities association to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In Section 11A(a)(1)(C),[14] the 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 quotations and transactions in securities.

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6)[15] and 11A(a)(1)(C)[16] of the Act because it protects investors and the public interest by promoting better processing of fund pricing information. Nasdaq represents that the proposed new listing criteria will provide greater transparency to the markets by providing pricing information for a broader base of funds for which there is significant investor interest. Nasdaq believes that by providing listed status only to *bona fide* investment companies with a sufficient investor base and trading interest, the proposed new listing standards will serve as a means for the marketplace to screen issuers and maintain fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 20549–0609. 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–00–16 and should be submitted by June 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–13957 Filed 6–2–00; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Amendment No. 2, *supra* note 4.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78k–1.

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1)(C).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3331]

Office of Mexican Affairs; Notice of Receipt of Application for a Presidential Permit for a Conveyor Belt To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

Notice is hereby given that the Department of State has received an application from Aggregate Products, Incorporated of Salton Sea Beach, California, for a Presidential Permit,

pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, seeking authorization to construct a conveyor belt at a site east of the Calexico/Mexicali II Port of Entry linking California and Baja California. The proposed conveyor belt would carry construction aggregate (size-segregated rock and sand) for use in road-paving projects in California. The conveyor belt would be approximately 1,081 feet long and ten feet wide, supported by between 13 and 15 pylons fixed in place. The conveyor belt would only be able to operate in a northerly direction, from Mexico to the U.S. When not in use, it would be stowed and locked entirely on the U.S. side of the border.

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested parties may submit comments regarding this application in writing by July 5, 2000 to Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, WHA/MEX Room 4258, Department of State, Washington, DC 20520. The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

FOR FURTHER INFORMATION CONTACT: David E. Randolph, Coordinator, U.S.-Mexico Border Affairs at the above address, by telephone at (202) 647–8529 or by fax at (202) 647–5752.

Dated: May 30, 2000.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs, Department of State.

[FR Doc. 00–14004 Filed 6–2–00; 8:45 am]

BILLING CODE 4710–29–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Compliance Incentive Program for SRBC Regulations

A. Purpose

The Susquehanna River Basin Commission (SRBC) approved Resolution 2000–03 on April 18, 2000 establishing a ''Compliance Incentive Program'' to encourage *existing, unapproved* water users to come into compliance with SRBC's water withdrawal and consumptive water use regulations. During the compliance incentive period, SRBC will not assess penalties *provided that applications are submitted by specified deadlines* and the noncompliance has not: (1) Adversely affected the environment; or (2) interfered with other water users. Because penalties are being waived, the need for settlements is likewise avoided (including those involving payments for prior consumptive water use). SRBC's objective is to have *all water users in the basin* compliant with SRBC's water management regulations. Universal compliance serves to enhance SRBC's ability to properly plan for and manage the basin's water resources.

B. SRBC's Existing Regulations Subject to Compliance Incentive Program

- 18 CFR 803.42—Consumptive Use of Water (This Requirement is not applicable to Agriculture)—more than 20,000 gallons per day (gpd) (averaged over 30 consecutive days) from any ground or surface water sources as of January 23, 1971. This regulation does not apply to projects that existed before January 23, 1971, UNLESS they increased their consumptive water use by more than 20,000 gpd after that date. Consumptive use of water is use in such a manner that the water does not return to the river basin; *e.g.* evaporation, incorporation into a product, diversion into another river basin.
- 18 CFR 803.43—Ground-Water Withdrawals—more than 100,000 gpd (averaged over 30 consecutive days) as of July 13, 1978. This regulation does not apply to projects that existed before July 13, 1978, UNLESS they increased their ground-water withdrawals by more than 100,000 gpd after that date.
- 18 CFR 803.44—Surface Water Withdrawals—more than 100,000 gpd (averaged over 30 consecutive days) as of November 11, 1995. This regulation does not apply to projects that existed before November 11, 1995 UNLESS they increased their ground-water withdrawals by more than 100,000 gpd after that date.

C. Eligible Applicants

To be eligible, unapproved water users must submit their water withdrawal and/or consumptive use applications by JUNE 30, 2001 (except for previously notified golf courses that are subject to alternate deadlines). During the eligibility period, the SRBC will not assess penalties. As noted above, because penalties are being waived, the need for settlements is likewise avoided (including those involving payments for prior consumptive water use).

The approved method of compliance for consumptive use will be effective January 1, 2001, regardless of when SRBC acts on the applications. Application fees are *not* waived during this compliance incentive period.

D. Where to Obtain Additional Information

To obtain more information, contact the Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391; Phone: 717–238–0423, fax: 717–238–2436. We also encourage you to visit our website at *http://www.srbc.net* where the text of Resolution 2000–03 and SRBC's regulations and application forms are available. You may also e-mail us at *srbc@srbc.net*.

Dated: May 18, 2000.

Paul O. Swartz,

Executive Director.

[FR Doc. 00–14020 Filed 6–2–00; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33801]

Wisconsin & Southern Railroad Company—Acquisition Exemption—Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway

Wisconsin & Southern Railroad Company (WSOR), a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 6.73 miles of a series of short rail lines in North Milwaukee, WI, known as the Gibson Line or the Gibson Spur, owned by Soo Line Railroad Company d/b/a Canadian Pacific Railway (CPR),[1] which it currently leases and operates from CPR.[2]

The lines to be acquired are as follows: (1) The Horicon Line, from Point A at milepost 93.72, the division of ownership with the State of Wisconsin, to Point B at milepost 93.20 in the vicinity of Glendale Yard; (2) the Canco Line, from Point B at milepost 93.20 extending in a northerly direction to Point C at milepost 95.18, the division of ownership with the Wisconsin Central Limited; (3) the Nut Line, from Point B at milepost 93.20 extending in a southeasterly direction to Point E at milepost 96.76; and (4) the Cement Line, an industry spur extending from switch with the Nut

[1] WSOR states in its notice that it has executed an asset purchase agreement with CPR to acquire the above-described rail lines.

[2] *See Wisconsin & Southern Railroad Co.—Lease and Operation Exemption—Soo Line Railroad Company, d/b/a CP Rail System*, Finance Docket No. 32706 (ICC served July 14, 1995).

Line milepost 95.47 to Point D, at the end of the track, .67 miles east of the Nut Line switch.

Because the projected revenues of the rail line to be operated exceed $5 million, WSOR certified to the Board, on September 21, 1999, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on that same date. *See* 49 CFR 1150.42(e).

WSOR reported that it intends to consummate the transaction more than 7 days after the filing of this exemption, or no later than June 5, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33801, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, REA, CROSS & AUCHINCLOSS, Suite 570, 1707 L Street, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 30, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13995 Filed 6–2–00; 8:45 am]

BILLING CODE 4915–00–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4626.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4626, Alternative Minimum Tax-Corporations.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: *Alternative Minimum Tax-Corporations.*

OMB Number: 1545–0175.

Form Number: 4626.

Abstract: Form 4626 is used by corporations to calculate their alternative minimum tax under section 55 of the Internal Revenue Code. The IRS uses the information on the form to determine whether the tax has been computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 48 hr., 44 min.

Estimated Total Annual Burden Hours: 2,923,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14011 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000-28, Coal Exports.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Coal Exports.

OMB Number: 1545–1690.

Notice Number: Notice 2000–28.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a

nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14012 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–7A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7A, Application for Taxpayer Identification Number for Pending U.S. Adoptions.

DATES: Written comments should be received on or before August 4, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Identification Number for Pending U.S. Adoptions.

OMB Number: 1545–1547.

Form Number: Form W–7A.

Abstract: Form W–7A is used to apply for an Internal Revenue Service taxpayer identification number (an ATIN) for use in pending adoptions. An ATIN is a temporary nine-digit number issued by the Internal Revenue Service for individuals who are in the process of adopting a United States resident child but who cannot get a social security number for that child until the adoption is final.

Current Actions: There are no changes being made to the form at this time.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 40 mins.

Estimated Total Annual Burden Hours: 33,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 24, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–14013 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The IRS Advisory Council (IRSAC) will hold a public meeting to present recommendations to the Commissioner of Internal Revenue regarding IRS modernization and redesign issues surrounding the Wage & Investment, Large and Midsize Business, and Small Business/Self-employed operating divisions. Other topics to be discussed include an update on the overall IRS modernization, an

overview of the 2000 filing season, third party authorization, update about customer service programs, and an overview of the transition process.

DATES: The meeting will be held on Wednesday, June 21, 2000, starting at 9:30 a.m.

ADDRESSES: Internal Revenue Service Main Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds; Office of Public Liaison and Small Business Affairs, CL:PL, room 7559 IR, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, telephone 202–622–5188, not a toll-free number. E-mail address: *public_liaison@.irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the IRSAC will be held on Wednesday, June 21, 2000, beginning at 9:30 a.m. in Room 3313, main building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Last minute changes to the agenda are possible and could prevent effective advance notice. The meeting will be in a room that accommodates approximately 50 people, including IRSAC members and IRS officials. Due to the limited space and security specifications, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622–5188 (not toll-free). Attendees are encouraged to arrive at least 30 minutes prior to the starting time of the meeting, to allow enough time to clear security at the 1111 Constitution Avenue, N.W., entrance.

If you would like for the IRSAC to consider a written statement, please call (202) 622–5081 or write to Merci del Toro, Office of Public Liaison, CL:PL, Internal Revenue Service, 1111 Constitution Avenue, N.W., Room 7559 IR, Washington, D.C. 20224, or E-mail at *public_liaison@irs.gov.

Dated: May 26, 2000.

Susanne M. Sottile,

Designated Federal Official, National Director, Office of Public Liaison and Small Business Affairs.

[FR Doc. 00–14014 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday June 28, 2000, 6:00 p.m. to 9:00 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201.

For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555.

The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Wednesday June 28, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues. Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 25, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications and Liaison.

[FR Doc. 00–14008 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, So. Florida District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the South Florida District Citizen Advocacy Panel will be held in Stuart, Florida.

DATES: The meeting will be held Friday, June 23, 2000 and Saturday, June 24, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227 or 954–423–7974.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a Public meeting of the Citizen Advocacy Panel will be held Friday, June 23, 2000, 6 p.m. to 9 p.m. and Saturday, June 24, 2000, 9 a.m. to Noon at the Stuart/Martin County Chamber of Commerce, 1650 South Kanner Highway, Stuart, FL 34994. For more information contact Nancy Ferree at 1–888–912–1227 or 954–423–7974. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912-1227 or 954–423–7974, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd #225, Sunrise, FL, 33351. Due to limited space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. In accordance with the American's With Disabilities Act, persons with special needs should call Nancy Ferree at 954–423–7973 to inform us of those needs by no later than June 16, 2000. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 25, 2000.

M. Cathy Vanhorn,

Director, CAP, Communications and Liaison.

[FR Doc. 00–14009 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A meeting of the Midwest Citizen Advocacy Panel will be held in Brookfield, WI.

DATES: The meeting will be held Thursday, June 22, 2000, and Friday, June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held

Thursday, June 22, 2000, from 9 a.m. to 4 p.m. and Friday, June 23, 2000, from 9 a.m. to 12 p.m. at Brookfield Public Library, 1900 N. Calhoun Road, Brookfield, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, discussion of issues, and CAP office report.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 19, 2000.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 00–14010 Filed 6–2–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify health care patterns of minority veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 4, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Veterans Identity Program Survey, VA Form 10–21037(NR).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The Veteran Identity Program (VIP) survey is intended to remedy shortcomings of existing data and research conducted on minority veterans health care patterns. Previous studies on veterans ethnicity have not been adequately studied due to the sampling methodologies employed, and veteran identity has never been studied due to theoretical shortsightedness. As a result, data on underrepresented veterans groups remains inadequate. Veteran identity is being introduced as a potentially significant predictor of veterans' health care use. The VIP will employ a primary data telephone survey to ensure adequate representation of underrepresented veterans groups. The collected data will be statistically analyzed by VIP researchers to determine how veteran identity and ethnicity predict VA ambulatory care service use by veterans. The results of the analysis will be used to improve minority veterans' access to health care.

Affected Public: Individuals or Households.

Estimated Annual Burden: 960 hours.

Estimated Average Burden Per Respondent: 18 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,200.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13921 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0110.''

SUPPLEMENTARY INFORMATION:

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., Section 3713(a) provides that when a veteran disposes of his or her interest in the property securing the loan, the VA may, upon request, release the original veteran-borrower from personal liability to the Government only if three requirements are fulfilled. First, the loan must be current. Second, the purchaser must assume all of the veteran's liability to the Government and the mortgage holder on the guaranteed loan. Third, the purchaser must qualify from a credit and income standpoint, to the same extent as if he or she were a veteran

applying for a VA-guaranteed loan in the same amount as the loan being assumed. Veterans who are selling their homes by assumption rather than requiring purchasers to obtain their own financing to pay off the loan must complete this form. The information furnished is essential to determinations for assumption approval, release of liability, and substitution of entitlement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000, at page 2459.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 680 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,082.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0110'' in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13922 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0165]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0165.''

SUPPLEMENTARY INFORMATION:

Title: Financial Status Report, VA Form 20–5655.

OMB Control Number: 2900–0165.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 20–5655 is mailed with the first and second demand letters to debtors who owe amounts over $50. The information collection on the form enables VA to determine the financial status of the debtor, his ability to pay, and the feasibility of exploring compromise.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999 at page 66695.

Affected Public: Individuals or households.

Estimated Annual Burden: 41,800 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 41,800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0165'' in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13923 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0564.''

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 24–0296 is used to gather the necessary information required to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999 at pages 66696–66697.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,600 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 198,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0564'' in any correspondence.

Dated: May 18, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13924 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0215]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0215.''

SUPPLEMENTARY INFORMATION:

Title: Request for Information to Make Direct Payment to Child Reaching Majority, VA Form Letter 21–863.

OMB Control Number: 2900–0215.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–863 is used by VA adjudicators to determine the address of a child attaining the age of majority and to determine the child's status for benefits. Title 38, CFR 3.403 provides direct payment to a child, if competent, from the date the child reaches the age of majority. Title 38, CFR 3.667 provides that a child may be paid from a child's 18th birthday based upon school attendance. This form letter solicits information needed to determine eligibility to benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000 at pages 2459–2460.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,767 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,600.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0215'' in any correspondence.

Dated: April 27, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13925 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0099.''

SUPPLEMENTARY INFORMATION:

Title: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

OMB Control Number: 2900–0099.

Type of Review: Revision of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of veterans who are eligible for Dependent's Educational Assistance under 38 U.S.C., chapter 35, complete VA Form 22–5495 to change their program of education and/or place of training. VA uses the information to determine if the new program selected by a spouse, surviving spouse, or child, is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2000 at page 2458.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0099'' in any correspondence.

Dated: May 17, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13926 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0114.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Marital Relationship, VA Form 21–4170.

OMB Control Number: 2900–0114.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4170 is used to develop the evidence necessary to make a determination as to whether a claimed common law marriage can be recognized by VA. Without this information, VA would have no means of determining the proper marital status of the veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2000 at page 4017.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0114'' in any correspondence.

Dated: April 27, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–13927 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 5, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0198.''

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 9, 2000 at pages 12627–12628.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 6,720.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

Dated: May 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–13928 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities has been renewed for a 2-year period beginning May 23, 2000, through May 23, 2002.

Dated: May 25, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–13920 Filed 6–2–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 65, No. 108

Monday, June 5, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

RIN 1210–AA79

Rules and Regulations for the Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

Correction

In rule document 00–13250 beginning on page 34393 in the issue of Tuesday, May 30, 2000, make the following corrections:

1. On page 34393, in the second column, in the **DATES** section, four lines down, ''July 29, 2000'' should read ''June 29, 2000''.

2. On page 34395, in the first column, 15 lines down, ''March, 2000'' should read ''May, 2000''.

[FR Doc. C0–13250 Filed 6–2–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 129

[Docket No. 29104; Amendment Nos. 91–264, 121–275, 125–33 & 129–28]

RIN 2120–AF81

Repair Assessment for Pressurized Fuselages

Correction

In rule document 00–10220 beginning on page 24108 in the issue of Tuesday, April 25, 2000, make the following corrections:

§91.410 [Corrected]

1. On page 24125, in the third column, in §91.410(l), in the third line, ''27,000'' should read ''60,000''.

§129.32 [Corrected]

2. On page 24127, in the first column, in §129.32(l), in the third line, ''60,00'' should read ''60,000''.

[FR Doc. C0–10220 Filed 6–2–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
June 5, 2000

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, et al.

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98–10–001, RM98–10–004, RM98–12–001, RM98–12–004; Order No. 637–A]

Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services

Issued May 19, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order addressing the requests for rehearing of Order No. 637 [65 FR 10156, Feb. 25, 2000]. Order No. 637 revised Commission regulations to enhance the competitiveness and efficiency of the interstate pipeline grid. The order revised Commission pricing policies by waiving price ceilings for short-term released capacity for a two year period and, permitting pipelines to file for peak/off-peak and term differentiated rate structures. It also effected changes in regulations relating to scheduling procedures, capacity segmentation, pipeline imbalance processes and penalties, pipeline reporting requirements, and the right of first refusal. The rehearing order largely denies rehearing on these issues, but grants rehearing, in part, to make clarifying adjustments to the regulations regarding penalties, reporting requirements, and the right of first refusal.

DATES: The amendments to the regulations will become effective July 5, 2000.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2084

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B. Peak and Off-Peak Rates
C. Term Differentiated Rates
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Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Order on Rehearing

In Order No. 637, issued on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued a final rule that amended Part 284 of the Commission's open access regulations to improve the efficiency of the market and to provide captive customers with the opportunity to reduce their cost of holding long-term pipeline capacity while continuing to protect against the exercise of market power.[1] In addition, the Commission instituted a new effort to monitor the changes taking place in the market so that the Commission can be prepared to continue its reexamination of its current regulatory framework to better meet the challenges posed by the growing competitive market. Specifically, the final rule made the following changes in the Commission's regulatory model:

- The rule grants a waiver for a limited period of the price ceilings for short-term released capacity to enhance the efficiency of the market while continuing regulation of pipeline rates and services to provide protection against the exercise of market power.
- The rule revises the Commission's regulatory approach to pipeline pricing by permitting pipelines to propose peak/off-peak and term differentiated rate structures. Peak/off-peak rates can better accommodate rate regulation to the seasonal demands of the market, while term differentiated rates can be used to better allocate the underlying risk of contracting to both shippers and pipelines.
- The rule improves the competitiveness and efficiency of the interstate pipeline grid by changing regulations relating to scheduling procedures, capacity segmentation, and pipeline penalties.
- The rule narrows the right of first refusal to remove economic biases in the current rule, while still protecting captive customers' ability to resubscribe to long-term capacity.
- The rule improves reporting requirements to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination.

Fifty-one requests for rehearing and clarification were filed, covering all the major elements of the rule.[2] As discussed below, the Commission largely denies rehearing, but grants rehearing, in part, to make clarifying adjustments to the regulations regarding penalties and reporting requirements. It also grants rehearing to clarify that shippers with a multi-year contract for a service that is not available for 12 consecutive months are eligible to exercise the right of first refusal.

I. Adjustments to Rate Policies

A. Removal of the Rate Ceiling for Capacity Release Transactions

In Order No. 637, the Commission removed the rate ceiling for short-term (less than one year) capacity release transactions for a two-year period ending September 30, 2002. In determining that the removal of the rate ceiling for short-term capacity release transactions was warranted, the Commission examined the interaction of its cost-of-service regulations with the actual way in which gas markets operate today. Based on this analysis of the market, the Commission concluded that the rate ceiling should be removed because cost-of-service rate regulation is not well suited to the short-term capacity market, the rate ceiling interfered with the efficient operation of the market, removal of the rate ceiling for short-term capacity would have little effect on the prices paid for capacity during peak periods, since shippers can avoid ceiling by making bundled sales, and removal of the ceiling would provide short-term shippers with an additional transportation option. The Commission found that protection against the exercise of market power in the short-term capacity release market could be achieved in ways other than

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 (Feb. 9, 2000).

[2] The appendix lists those filing for rehearing and clarification.

direct price regulation, including competition from other sellers of released capacity, improved reporting, monitoring and complaint procedures, and the maintenance of Commission regulation of pipeline capacity. In order to review the effects of this change in regulatory philosophy, the Commission limited the removal of the price ceiling to a two-year period so that the Commission and the industry could obtain more complete information about how the change would actually affect prices.

Requests for rehearing have been filed challenging the Commission's determination to grant a waiver of the price ceiling for short-term capacity release transactions.[3] In addition, several pipelines request rehearing of the determination not to remove rate ceilings on their short-term capacity.[4] As discussed below, the Commission is denying rehearing with respect to the waiver of the price ceiling[5] and is denying the request to apply the waiver to pipeline services. Others requested rehearing or clarification regarding the way in which the regulation would be applied. The Commission will address those requests.

1. Removal of the Price Ceiling

The requests for rehearing contend that the removal of the rate ceiling for short-term capacity release transactions permits unjust and unreasonable rates, because the Commission has not put forward sufficient proof that the market for capacity release transactions is competitive. They maintain that the Commission improperly found that short-term shippers were entitled to less protection against market power than long-term shippers. They argue that the Commission legally is permitted to relax rate regulation for short-term shippers only when the Commission has conducted a market-by-market analysis to show that there are sufficient alternative sources of supply, so the resulting rates can be considered just and reasonable.[6] They maintain the Commission has not conducted the market analysis of competition that it previously required in order to demonstrate a lack of market power and that reporting requirements and complaints are not an adequate basis to police market power abuses. The rehearing requests further maintain that the Commission failed to take into account the ability of pipelines to use their affiliates to purchase capacity, in order to capture the profits from above maximum rate capacity sales.[7]

Those seeking rehearing also argue that the Commission cannot base its determination to release the rate ceiling on the evidence showing that releasing shippers can avoid maximum rate regulation by making bundled gas sales[8] with transportation values that exceed the maximum rate. They maintain that the Commission should not be permitted to justify the removal of the rate ceiling on its own failure to make the capacity release system work and its continued tolerance of the bundled sales market.

Under section 4 of the Natural Gas Act (NGA), the Commission's responsibility is to ensure that rates are just and reasonable. To be sure, that responsibility entails an examination of the potential for the exercise of market power.[9] But rate regulation cannot perfectly emulate the prices produced by a competitive market and rate regulation frequently reflects a balance between the potential for exercise of market power and the need to promote allocative or productive efficiency or achieve other regulatory goals.[10] The Commission's current regulatory framework, for instance, has long permitted some exercise of market power by pipelines through selective discounting below the maximum rate. The justification for permitting this exercise of market power is to enhance efficiency by increasing throughput and to benefit those captive customers with long-term contracts by reducing, in the pipeline's rate case, the amount of the fixed costs that otherwise would be recovered through the rates paid by those captive customers.[11]

In this instance, the Commission has reviewed its regulations in light of the actual workings of the gas market. Based on this analysis, the Commission decided to make an incremental change to its current regulatory framework by creating a two-year waiver of price ceilings only for short-term capacity release transactions in the secondary market, while retaining rate regulation for primary capacity available from the pipeline as well as long-term capacity release transactions. The Commission determined that cost-of-service rate ceilings for short-term capacity release transactions do not approximate competitive prices. It further found that maintenance of the rate ceiling reduces efficiency, inhibits capacity trading and reduces the dissemination of accurate pricing information, limits shippers' capacity options, and inequitably allocates the cost of capacity between long-term and short-term shippers. Rather than continuing a traditional approach to regulation, the Commission has opted for a different regulatory approach which first, seeks to reduce the potential for the exercise of market power and second, employs contemporaneous reporting and monitoring along with case-specific enforcement mechanisms to identify and correct exercises of market power. The Commission will discuss below the various factors that led it to the conclusion that, on balance, removal of the price ceiling for short-term capacity release transactions will result in just and reasonable rates for all shippers and will respond to the rehearing requests in each of these areas.

a. Cost-of-Service Ratemaking. The Commission found in Order No. 637 that cost-of-service ratemaking is not well suited to the short-term capacity release market. The purpose of regulating a pipeline's rates is to try to capture the productive efficiency of a natural monopoly while imposing limits on the monopolist's ability to exercise market power. To achieve this goal, cost-of-service ratemaking limits a pipeline's rates to an amount sufficient to recover its revenue requirement. Cost-of-service regulation inhibits the exercise of the pipeline's market power because the pipeline's rates are limited, eliminating a monopolist's incentive to

[3] Rehearing Requests of Amoco, IPAA, Indicated Shippers, NGSA, NWIGU, National Association of Gas Consumers, Process Gas Consumers.

[4] Rehearing requests of CNG, Great Lakes, Kinder-Morgan, Koch, Williams.

[5] On April 20, 2000, Indicated Shippers and Independent Petroleum Association of America requested rehearing of the Commission's decision to deny their request for a stay of the price cap waiver. That request too is denied.

[6] Rehearing Requests by Amoco, IPAA, Indicated Shippers, NGSA, NWIGU, Process Gas Consumers.

[7] Rehearing Requests by Amoco, IPAA, Indicated Shippers, Ohio Oil and Gas Association, Process Gas Consumers.

[8] The rehearing requests refer to the bundled sales market as the gray market.

[9] *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944); *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 995 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988).

[10] *See Environmental Action* v. *FERC,* 996 F.2d 401 (D.C. Cir. 1993) (recognizing the need to balance efficiency gains from unfettered trading with the need to protect against the exercise of market power). *See also* Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968) (need to balance interests of investors and the protection of the public interest); *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (ratemaking involves the balancing of investor and consumer interests).

[11] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1010–1012 (D.C. Cir. 1987) (selective discounting permitted to benefit captive customers by contributing to payment of fixed costs), *cert. denied,* 485 U.S. 1006 (1988); *United Distribution Companies* v. *FERC,* 88 F.3d 1105, 1141–42 (D.C. Cir. 1996) (affirming Commission's determination to permit selective discounting and not requiring pipelines to discount); 1 A. Kahn, the Economics of Regulation 131–33 (1970) (price discrimination one solution to problems of natural monopoly and declining costs).

withhold capacity (by not constructing facilities) in order to raise prices through the creation of scarcity. This rationale for limiting rates for pipelines, however, has little applicability to the secondary market where releasing shippers do not control the amount of long-term capacity that will be built.

In addition, the static annual rates produced by cost-of-service ratemaking bear no relationship to competitive rates that would be established in the short-term market, particularly during peak periods. The evidence cited in Order No. 637 showing the implicit value of transportation in the bundled sales market demonstrates the variability of transportation value in the short-term market and the divergence between transportation value and cost-of-service rates. In short, traditional methods of cost-of-service regulation cannot come close to emulating the variability of short-term market prices.

The rehearing requests do not dispute that the cost-of-service ratemaking method is ill-suited to the short-term capacity release market, and they do not challenge the Commission's conclusion that no method of cost-of-service rate regulation could emulate the prices a competitive market would produce. Indeed, they recognize that during peak periods, transportation prices in a competitive market could exceed the cost-of-service maximum rate.[12] Despite the recognized infirmities of cost-of service regulation as applied to the short-term capacity release market, the rehearing requests contend that the Commission has no choice other than to continue to use this method of regulation unless it conducts a market analysis showing that each market performs competitively. As explained below, the Commission has concluded that the removal of cost-of-service regulation for short-term capacity release transactions is warranted without a full market-by-market analysis.

b. Bundled Sales and Transportation. In today's gas market, shippers can effectively bundle gas and transportation to make gas sales in downstream markets. During peak periods, when transportation values exceed maximum ceiling rates, firm shippers can avoid the ceiling rates by making bundled sales at delivery points, rather than releasing the transportation capacity independently. As a consequence, the Commission concluded that the price ceiling does not limit the prices paid by shippers in the short-term capacity release market as much as it limits their transportation options. Due to the price ceiling, many shippers without firm transportation are limited to purchasing gas through a bundled sales transaction or simply taking gas from the pipeline system and incurring overrun and scheduling penalties. The price ceiling in effect denies these shippers the option of obtaining transportation capacity (without gas) during peak periods.

The rehearing requests recognize the existence of the bundled sales market and do not challenge the fact that the value of transportation in bundled sales transactions can exceed the maximum rate derived from cost-of-service regulation. Some suggest that the bundled sales market is not a factor at upstream pooling points in the production area, constraint points, or at interconnects, although they do not explain why bundled sales cannot be made at such points.[13] In fact, comments in this proceeding indicate that production area pricing is governed by the same basis differentials as downstream markets.[14] Those requesting rehearing instead argue that the Commission should not allow its failure to ''make the capacity release system work, and continued tolerance of the grey market'' [15] justify the removal of the price ceilings in the short-term capacity release market.

The capacity release system was intended to provide an efficient method by which shippers could reallocate transportation capacity to other shippers in a way that is fair, open, and transparent and that would provide good market information about the value of pipeline capacity. But the short-term rate ceiling prevents the capacity release system from fulfilling these goals during peak periods precisely because releasing shippers seek to avoid the rate cap by ignoring the capacity release market and bundling the transportation with downstream sales. Removal of the rate ceiling on short-term capacity release transactions, therefore, will make the capacity release system more, not less, viable. It will also serve to make capacity transactions during peak periods more transparent, providing good information to all shippers about the market value of transportation.

Nor do those seeking rehearing suggest how the Commission could regulate the bundled sales market in ways that would not reduce the efficiency of that market and that would be consistent with Congress's deregulation of gas sales.[16] For the Commission to ignore the bundled sales market, as the rehearing requests suggest, is to take a panglossian perspective, rather than seeing the market as it really exists. The Commission has concluded that its regulation will be far more effective if it recognizes how business is really done and seeks to impose regulatory controls that are consistent with that market, rather than continuing to use regulatory methods that are ineffective and reduce efficiency. Given the ability of shippers to make bundled sales without rate ceilings, removal of the rate ceiling for capacity release transactions will have little adverse effect on the transportation costs consumers will pay. Rather, lifting of the price ceiling adds another capacity option to the market that can increase efficiency and the transparency of transactions, and thereby, result in lower effective transportation rates.

c. *Promotion of Greater Efficiency.* Even if the bundled sales market were not effective as a substitute for releasing capacity, the Commission found in Order No. 637 that the price ceiling on capacity release transactions inhibits the efficient allocation of capacity and harms short-term shippers. The price ceiling in the long-term market serves to protect customers by reducing the pipeline's ability to exercise market power either by withholding capacity to raise price or by price discriminating and, as a consequence, creates the incentive for pipelines to add capacity when demand increases. The pipelines have an incentive to increase capacity, because adding capacity is the only way the pipeline can increase long-term revenue. In the short-term capacity release market, however, a rate ceiling does not provide comparable protection.

Shippers without firm capacity are always at risk of being unable to obtain capacity, because the services on which they rely, pipeline interruptible or released capacity, may not be available during peak periods, or may be available only in limited quantities. Given the limited amount of capacity available during peak periods, a rate ceiling is of little or no benefit to a short-term shipper; capping the price the shipper can pay provides no protection to a

[12] Rehearing Request of Process Gas Consumers, at 30.

[13] Rehearing Requests of Amoco, IPAA, Indicated Shippers, NGSA.

[14] Comments by Koch, at 41–42 (on a production area pipeline, ''the value of transportation services (both firm and interruptible) is driven primarily by the basis differentials that are present across its system'').

[15] Rehearing Request of IPAA, at 16. For the same point, see Rehearing Requests by Amoco, Indicated Shippers, NGSA, Process Gas Consumers.

[16] Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101–60, 103 Stat. 157 (1989); Natural Gas Policy Act, § 601(a)(1), 15 U.S.C. 3431 (Commission jurisdiction does not apply to first sales of domestic gas).

shipper that, as a result of that ceiling, cannot obtain the capacity it needs. The rate ceiling creates an inefficient allocation system which operates to prevent the shipper most valuing the capacity from being able to obtain it. For example, the rate ceiling results in arbitrary allocations of capacity based on queue positions or on a *pro rata* allocation, in which the shipper most needing the capacity may be unable to obtain any capacity or the amount of capacity it needs. Indeed, the removal of the rate ceiling benefits short-term shippers because the shipper placing a high value on the capacity has greater assurance of obtaining the capacity it needs than it does under a price cap where that shipper may be unable to obtain any capacity.[17] The rate ceiling could have the further effect of actually reducing the amount of released capacity available, because price ceilings may make the release of capacity uneconomic for some shippers.

Those requesting rehearing do not contest that the use of price ceilings during peak periods can result in an inefficient allocation of capacity. Instead, Indicated Shippers maintain that the Commission's assertion that removing price ceilings could induce releasing shippers to release additional capacity is completely speculative. But the Commission's conclusion was not speculation; it was based on sound economic theory.[18] A releasing shipper will hold onto its capacity if the amount it receives for the release is less than its opportunity cost, the value to the shipper of the next best use of its capacity. Thus, a releasing shipper, subject to a rate ceiling, will hold onto capacity if the amount it will receive is less than the cost to it of using an alternative fuel or storage, or the cost of reducing its use of gas through conservation. However, if the releasing shipper can obtain the market value for its capacity and that value exceeds the value of its next best alternative, it will choose to release that capacity, thereby adding to the amount of released capacity to the market. The effect of increasing the amount of released capacity available in the market will be to reduce the price for transportation, because, as the supply of transportation increases, but the demand for transportation remains the same, the price of transportation will decrease.

Indicated Shippers also contends that in light of pipelines' ability to file for peak and off-peak rates, the Commission has not explained why additional action is needed to aid long-term shippers in defraying the cost of their reservation charges. In the first place, the purpose of removing the rate ceiling was not simply to permit firm shippers a greater opportunity to defray the cost of their reservation charges (although that was one goal). An equally important purpose was to help foster an efficient trading market in which capacity would be sold to the shipper placing the highest value on obtaining transportation service. Particularly during peak periods when capacity is most constrained, an efficient market is needed so that a market clearing price will provide for the efficient allocation of capacity. While permitting pipelines to file for peak and off-peak rates will enable pipelines to file for rate structures more in line with the value of transportation capacity, the development of peak and off-peak rates that remain within a pipeline's cost-of-service may not come close to duplicating the rates, particular during peak periods, that a competitive market would require to clear efficiently. As the data cited in Order No. 637 with respect to the value of transportation demonstrates, during peak demand periods the value of transportation in an efficient market rises dramatically for short periods to levels that would exceed the rates that pipelines could establish through proposals for cost-of-service peak/off-peak rates.[19] For instance, during some peak winter periods, the value of transportation was 8–13 times greater than the applicable maximum rate for short periods of time, but during other winter periods with differing demand conditions the peak period rates were only 1½ to 2 times the maximum rate. Pipelines would not propose revenue neutral cost-of-service peak rates coming close to the higher levels that occur during peak constraint periods, because they could never be sure how frequently those demand conditions would occur and if they established peak winter rates at that level, their off-peak rates would be so low that in many cases, they would be unable to recover their cost-of-service. Moreover, even if pipelines could propose peak rates high enough to cover market prices during maximum constraint periods, those rates would be far too high for the same time period when demand conditions are not as severe. While cost-of-service peak and off-peak pricing has a legitimate purpose in the world of cost-of-service ratemaking, these rates likely will not approximate the efficient rates that a competitive market needs to clear during peak periods. In order to create such a efficient market, cost-of-service peak and off-peak rates are not sufficient and removal of the rate ceiling for capacity release transactions (with the protections adopted by the Commission) is necessary to permit efficient pricing.

d. Equitable Allocation of Capacity Costs. The Commission found in Order No. 637 that the price ceiling can result in an inequitable distribution of costs between long-term firm capacity holders and short-term shippers. Indicated Shippers maintain that the Commission has no foundation for finding that higher rates during peak periods are needed to reapportion cost responsibility between short-term and long-term shippers. They argue that the Commission failed to take any steps in Order No. 637 to ensure that capacity is not withheld during off-peak periods and, therefore, they maintain market power may be exercised during off-peak periods.

Prior to Order No. 636, and the institution of capacity release, pipelines were the only source of interruptible capacity during off-peak periods. Pipelines could discount selectively, charging maximum rates to customers with more inelastic demand and charging discounted rates to customers with alternatives, such as dual fuel capability. The pipelines' ability to selectively discount benefitted the long-term firm capacity holders, because the greater contribution to cost recovery provided by interruptible service would reduce firm shippers' rates.

The institution of capacity release in Order No. 636, along with flexible receipt and delivery points, placed competitive pressure on the pipelines' interruptible service, because a shipper in the short-term market was given the choice of obtaining capacity from a number of releasers, rather than being limited to pipeline interruptible service. In fact, during the Order No. 636 proceedings, pipelines were concerned that competition from capacity release would so reduce the level and prices for interruptible service that they would be unable to recover the costs allocated to

[17] Those short-term shippers who currently have a high place on the pipeline's queue may prefer the current system, because they can obtain capacity at a cheap regulated rate and use it to effect a bundled sale at market prices reflecting a higher market value. But this is a selective benefit to certain shippers not a benefit to the market as a whole.

[18] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1008–09 (D.C. Cir. 1987) (agency can rely upon generally accepted economic theory even without factual evidence to support proposition that increased competition will lead to lower prices), *cert, denied,* 485 U.S. 1006 (1988); *Environmental Action* v. *FERC,* 939 F.2d 1057, 1064 (D.C. Cir. 1991) (agency entitled to rely upon predictions about the market it regulates).

[19] Order No. 637, 65 FR at 10196, 10174–79, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,271–74 (figures 6 and 7).

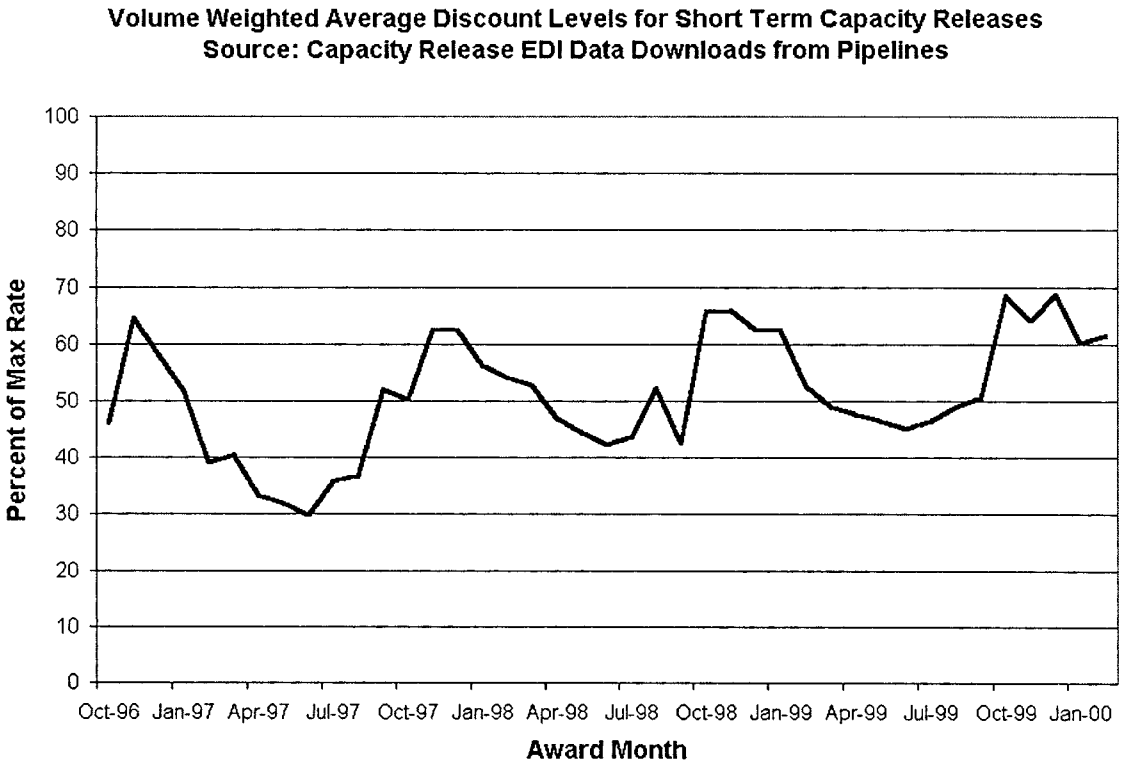
interruptible service.[20] Accordingly, in restructuring proceedings, pipelines reduced the cost responsibility for interruptible service, and increased firm shippers' rates. After the institution of capacity release, firm shippers could reduce their costs of holding pipeline capacity by releasing the capacity they held as well as receiving interruptible revenue credits to the extent the pipeline was able to sell interruptible service above the costs allocated to that service.[21]

With the advent of capacity release, however, the rates for capacity release and pipeline interruptible service have fallen well below maximum tariff rates, particularly during off-peak periods, as would be expected from the addition of numerous firm shippers who are now competing with the pipeline to sell capacity during off-peak periods. This is well documented. Numerous commenters made the point that competition from capacity release transactions has depressed short-term rates, particularly during off-peak periods, and has hurt long-term shippers by requiring them to bear a greater proportion of capacity costs.[22]

Studies support the finding that short-term rates have fallen well below maximum rates. One study, using data from the period 1992–1998, has shown that the average rates for released capacity range from 31% to 76% of maximum rates in 17 pipeline corridors, with only 5 of the corridors exceeding an average rate of 60%.[23] Commission data from capacity release and interruptible transactions also support the conclusion that short-term rates fall well below maximum tariff rates. The following graphs show the average prices of capacity release transactions and discounted pipeline interruptible transportation from October 1996 to February 2000, as a percentage of the applicable maximum tariff rate.[24]

The average capacity release rate for all pipelines in the sample ranges from 30% to 70% of the pipeline's maximum rate, with the lowest average in the off-peak winter months. Off-peak rates during the summer months were below 50% of the maximum rate in all three off-peak periods.

Figure 1 –Capacity Release Transactions as Percentage of Maximum Rate (Oct. 1996-Feb. 2000)



[20] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,562–63 (Aug. 3, 1992).

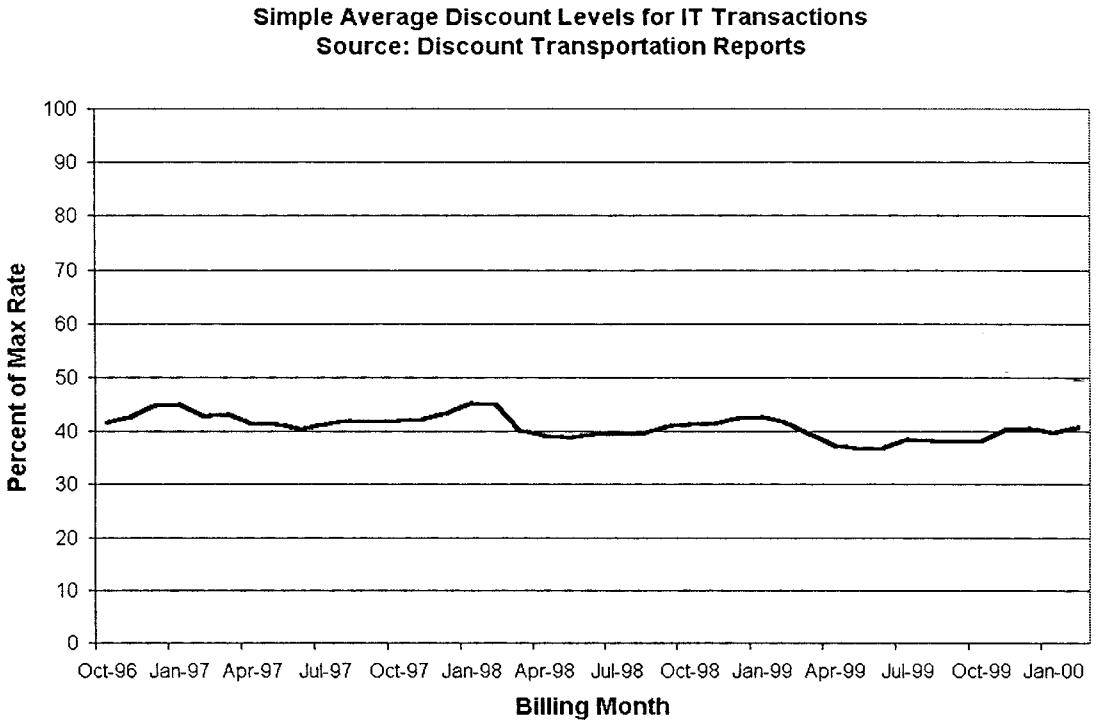
[21] *Id.*

[22] Associated Gas Distributors v. FERC, 824 F.2d 981, 1008–1009 (D.C. Cir. 1987) (agencies do not need to conduct experiments to verify predictions that competition will lower prices), *cert. denied,* 485 U.S. 1006 (1988). Comments of AGA I, Arkansas PSC, Consolidated Edison, Enron Pipelines, Illinois Commerce Commission, INGAA, NARUC, NASUCA, Nisource, Pennsylvania/Ohio Consumer Advocates, Pennsylvania PUC, Philadelphia Gas Works, Piedmont/UGI, PSC of Wisconsin, PUC of Ohio, and Washington Gas Light.

[23] Henning & Sloan, Analysis of Short-Term Natural Gas Markets, 41–45 (Energy and Environmental Analysis, Inc., November 1998) (the authors conclude that these percentages are somewhat overstated insofar as they reflect maximum rate transactions mandated by state unbundling programs).

[24] The data are derived from capacity release data downloaded from 33 pipeline Internet sites, and the discount reports filed by the pipelines with the Commission.

Figure 2 –Interruptible Transportation Rates as Percentage of Maximum Rate (Oct. 1996-Feb. 2000)



For discounted interruptible transportation, the average rate ranged from the mid-30% to mid-40% of maximum rates.[25] Removal of the rate ceiling, therefore, removes a regulatory bias in the current system and will help to create a more equitable distribution of capacity costs between short and long-term customers, just as selective discounting did before the advent of capacity release. Prior to capacity release, pipeline sales of interruptible transportation reduced the cost responsibility of long-term shippers, because the revenue from interruptible transportation lowered the amount of costs allocated to long-term firm shippers. Shippers with inelastic demand buying short-term interruptible transportation service were more likely to pay maximum rates, because they had fewer capacity alternatives. With the advent of capacity release, however, the prices for released capacity during the off-peak periods are well below maximum rates and the rate ceiling prevents long-term shippers from recovering the value of capacity during peak periods. Similarly, pipeline interruptible transportation recovers less of the cost-of-service than it did before, so long-term shippers are required to shoulder a higher level of cost responsibility than they did prior to the institution of capacity release.

Removal of the rate ceiling on capacity release transactions, therefore, will help restore the previous balance between the cost responsibility of long and short-term shippers, but in a way consistent with prices in a competitive market. Short-term shippers will continue to benefit from lower rates during off-peak periods, but will now face more appropriate market rates during peak periods. By the same token, long-term customers, which can recover only a small portion of their capacity costs through capacity release during off-peak periods, will be able to recover a greater proportion of those costs during peak periods. As a result of removing the rate ceiling, short-term shippers will pay their fair share of capacity costs through the release market to reflect their peak period use and long-term captive customers will benefit by being better able to defray their costs of holding capacity by selling released capacity.

e. Protection Against the Exercise of Market Power. In Order No. 637, the Commission concluded that maximum rate regulation may not be appropriate for regulating the short-term capacity release market, that there are a number of factors which inhibit the ability of releasing shippers to exercise market power, and that the Commission can assure just and reasonable rates through indirect methods. Competition among capacity releasers—enhanced by the Commission's regulations providing for flexible receipt and delivery point rights and capacity segmentation—provides protection against the exercise of market power. This protection is supplemented by public reporting of pricing, along with complaint procedures that permit the Commission to monitor and respond to complaints about the exercise of market power. In addition, the Commission is maintaining regulatory protections against market power abuse, including the retention of the Commission's current posting and bidding requirements for capacity release transactions, the maintenance of

[25] The purpose of these data is to compare the rates for capacity release and interruptible service to the maximum tariff rate. Due to differences in the way in which capacity release and interruptible transportation are reported, one can draw no conclusion about whether the average rates for capacity release are higher or lower than the rates for interruptible service. The average capacity release rates include deals at the maximum tariff rate, but the average discounted interruptible rate does not include maximum rate transactions because prior to Order No. 637, pipelines did not include maximum rate interruptible transactions in their discount reports. In addition, the capacity release transactions are weighted by the volume of the contract demand involved, while the interruptible transactions are simple averages, because interruptible shippers do not have a contract demand. They can ship only as much gas as the pipeline has available.

rate regulation on primary pipeline capacity and on long-term capacity release transactions, and the regulation of pipeline penalty levels to establish an effective ceiling price for release transactions.

The crux of the arguments presented by those seeking rehearing is that regardless of the limits of maximum rate regulation and the inefficiencies created by such rate regulation for the short-term capacity release market, the Commission legally must continue to apply cost-based ceiling rates in the short-term capacity release market unless it conducts a detailed market study showing that there are a sufficient number of competing suppliers of capacity to ensure the market is competitive. They maintain that without such a market-by-market study, removal of rate ceilings is not permissible. The Commission does not view its authority to choose appropriate regulatory methods for implementing the Natural Gas Act to be so limited. The Commission will discuss below its legal authority to remove rate ceilings and the protections against the exercise of market power that will continue to exist.

(1) Legal Justification

The courts have long recognized that the Commission is not ''bound to the use of any single formula or combination of formulas in determining rates.'' [26] ''Under the statutory standard of 'just and reasonable,' it is the result reached not the method employed which is controlling.'' [27] The courts have recognized that the Commission's ratemaking function rates requires a balancing of interests.[28]

They further recognize that the Commission's ratemaking function requires the making of ''pragmatic adjustments which may be called for by particular circumstances.'' [29] The Court, for example, recognized the difficulties the Commission faced in regulating individual producer prices and permitted the Commission to depart from individual producer cost-of-service ratemaking to the use of area and national rates.[30] The Court also has found that the Commission has the authority to depart from cost-of-service ratemaking for some classes of customers and to rely upon methods of indirect regulation to keep rates within just and reasonable levels.[31]

In Order No. 637, the Commission examined the available methods of direct rate regulation as well as the operation of the gas marketplace, and concluded that direct rate regulation of the short-term release market did more harm than good, since shippers can avoid rate regulation in the short-term capacity release market by making bundled sales and because regulation of short-term rates results in market inefficiency, findings the rehearing requests do not significantly challenge. In this context, the Commission determined that its existing methods of rate regulation needed to be changed to better comport with the actual operation of the market.[32] To respond to the changes in the market, the Commission undertook a limited program to improve the efficiency of the short-term capacity release market in which rate regulation was relaxed for a short period only for short-term capacity release transactions. In place of direct rate regulation, the Commission is relying on a combination of other factors to ensure rates remain just and reasonable, including competition among releasing shippers, regulatory changes to enhance competition, posting requirements to increase transparency, monitoring and enforcement, and the continuation of regulation on pipeline capacity. The Commission limited the program to a two-year period, which enables the Commission to gather data on market performance which otherwise would be unavailable.

The setting of just and reasonable rates is intended to establish a reasonable balance between the interests of pipelines and consumers.[33] In this rule, the Commission has retained cost-of-service regulation for pipelines to assure just and reasonable prices for primary pipeline capacity. Since firm shippers can make bundled sales without rate ceilings, the current price ceiling on capacity release transactions in the secondary market has little impact on final consumer prices and, in fact, as explained earlier, lifting the rate ceiling may help to reduce such prices by increasing the efficiency and transparency of the market. With the market and regulatory protections against market power, the lifting of the rate ceiling for short-term capacity release transactions is consistent with the Commission's statutory authority because it will have limited effect on consumer prices and provides protection against unjust and unreasonable prices.

The cases principally cited in the rehearing requests do not preclude the approach adopted by the Commission in Order No. 637.[34] First, these cases concern the lifting of price ceilings for primary capacity from a pipeline or regulated utility, not, as is the case here, with the relaxation of rate regulation only in the secondary market, with rate regulation maintained for primary pipeline capacity. Second, they do not indicate, as the rehearing requests contend, that a competitive market analysis is a prerequisite for relaxing cost-of-service rate regulation in the secondary market.

Farmers Union did not require a detailed market-by-market study before relaxing cost-of-service rate regulation. In *Farmers Union,* the Court found that the Commission had not justified relaxation of cost-based regulation of oil pipeline companies, because the Commission had not shown how its overall regulatory program would ensure that pipeline rates remained within the zone of reasonableness. But *Farmers Union* focused on balancing the financial interests of the oil pipelines and the relevant public interest and did not focus on regulation of the secondary or resale market. Even so, *Farmers*

[26] *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 602 (1944); *Elizabethtown Gas Company* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993); *Farmers Union Central Exchange* v. *FERC,* 734 F.2d 1486, 1501 (D.C. Cir. 1984).

[27] Hope, 320 U.S. 591, 602.

[28] Permian Basin Area Rate Cases, 390 U.S. 747, 792 (1968) (need to balance interests of investors and the protection of the public interest); *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944) (ratemaking involves the balancing of investor and consumer interests); *Farmers Union Central Exchange* v. *FERC,* 734 F.2d 1486, 1502 (D.C. Cir. 1984) (balance of financial interest of regulated company and public interests).

[29] Permian Basin Area Rate Cases, 390 U.S. 747, 777 (1968). *See FPC* v. *Natural Gas Pipeline Co.,* 315 U.S. 575, 586 (1942); Hope, 320 U.S. 591, 602.

[30] Permian Basin Area Rate Cases, 390 U.S. 747 (1968) (permitting area rates); *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United Distribution Companies,* 498 U.S. 211 (1991) (permitting the collapse of prior vintage rates into a single national ceiling rate equal to the highest pre-existing ceiling rate).

[31] *FPC* v. *Texaco,* 417 U.S. 380 (1974) (authority to assure just and reasonable rates through indirect regulation as opposed to direct price regulation); Permian Basin Area Rate Cases, 390 U.S. 747, 787 (1968) (Commission empowered to prescribe different requriements for different classes of persons or matters).

[32] Permian Basin Area Rate Cases, 390 U.S. 747, 785, 790 (1968) (Commission permitted to adopt policies needed to respond to demands of changing circumstances).

[33] Hope, 320 U.S. 591, at 603 (ratemaking involves a balance of investor and consumer interests); *Tejas Power Corporation* v. *FERC,* 908 F.2d 998 (D.C. Cir. 1990) (Commission must protect interest of consumers); *Farmers Union Central Exchange, Inc.* v. *FERC,* 734 F.2d 1486, 1502 (D.C. Cir. 1984) (strike a fair balance between financial interests of the regulated company and public interest).

[34] The cases principally cited in the rehearing requests are *Farmers Union Central Exchange* v. *FERC,* 734 F.2d 1486, 1509–10 (D.C. Cir. 1984), *Elizabeth Gas Company* v. *FERC,* 10 F.3d 866 (D.C. Cir. 1993), *Environmental Action* v. *FERC,* 996 F.2d 401 (D.C. Cir. 1993).

Union recognized that the Commission was not confined to cost-of-service ratemaking (734 F.2d 1486, at 1501), that non-cost factors could play an important role in determining whether rates are just and reasonable (734 F.2d 1486, at 1502), that changing circumstances can justify an agency in taking a new approach to the determination of just and reasonable rates (734 F.2d 1486, at 1503), and that rate regulation can be relaxed if the regulatory scheme itself acts as a monitor to maintain rates in the zone of reasonableness or to act as a check on rates if they are not (734 F.2d 1486, at 1509). The court concluded that ''moving from heavy to lighthanded regulation ''can be justified by a showing that under current circumstances, the goals and purposes of the statute will be accomplished through substantially less regulatory oversight.'' [35]

In Order No. 637, the Commission, satisfied the *Farmers Union* criteria. It described in detail the non-cost factors and industry changes that justified the relaxation of cost-of-service regulation for short-term capacity release transactions. It demonstrated how the regulatory scheme, including competition, monitoring, complaint procedures, mitigation measures, such as the capacity auction, and the continuation of regulation for primary pipeline services, would act as a check to ensure that rates remain just and reasonable. For instance, unlike *Farmers Union,* where the Court found the Commission had failed to document how market forces would limit rates to just and reasonable levels, [36] the record shows that competition from multiple firm shippers has successfully reduced rates, particularly during off-peak periods, to well below the maximum regulated rate. The Commission found that, given the interaction of all these factors, the goals and purposes of the NGA would be accomplished through relaxation of cost-of-service rates for the short-term capacity release market and greater reliance on other regulatory initiatives for controlling the potential exercise of market power.

Elizabethtown was the next case in which the court considered relaxation of a cost-of-service ratemaking. In *Elizabethtown,* the court affirmed the Commission's determination to replace cost-of-service ratemaking for pipeline gas sales with market based pricing, rejecting the contention that the Commission is required under the NGA to base rates on historic cost-of-service ratemaking principles. The court recognized that the use of the Commission's section 5 authority, either upon the Commission's own motion or that of a complaint, can assure that negotiated rates remain just and reasonable. [37] As the rehearing requests note, in *Elizabethtown,* the Commission relied on a market study as part of its conclusion that market-based rates were just and reasonable, but the court did not suggest that such a market study was a necessary requirement for permitting market-based rates if other factors would keep rates within a just and reasonable range.

Environmental Action continued the movement toward the use of lighter handed regulation when needed to achieve other statutory goals. In *Environmental Action,* the Court approved a relaxation of cost-of-service rate regulation for an electric power pool in order to promote more effective capacity trading, even though the Commission did not conduct a detailed market analysis of competition. *Environmental Action* admittedly is different than the Commission's action in this proceeding, because while the Commission in *Environmental Action* did not rely upon company-by-company cost-of-service analysis to design rates, it maintained a cost based rate ceiling based on the hypothetical cost of the average company for firm energy, the most valuable and expensive service offered in the power pool. The Court found that the Commission could relax rate regulation because the Commission had struck a reasonable balance between promoting efficiency through capacity trading and relying on competition and price disclosure as a means of protecting against price gouging and the exercise of market power.[38] In *Environmental Action,* the Court further found that the benefits of free and open trading justified a risk of price discrimination against the most captive members of the pricing pool. Similarly, the benefits of more efficient and effective capacity trading in this instance outweigh any limited potential for the exercise of market power during the few periods in which transportation value exceeds maximum rates.

In *Environmental Action,* the Commission did impose a high ceiling rate as further protection against the exercise of market power by the utilities in the pricing pool. But *Environmental Action* involved a lifting of rate ceilings for all transactions, including those made by the utilities. In Order No. 637, in contrast, the Commission has lifted the price ceiling only for short-term capacity release transactions, while retaining cost-based regulation for pipeline services and long-term capacity release transactions. The evidence showing large and sudden increases in transportation values during peak periods demonstrates that the Commission could not design a cost-based short-term rate ceiling that would emulate short-term market prices and that would not interfere with the efficiency of the capacity release market, particularly during peak periods when an efficient market is most needed. In order to come close to replicating market prices during peak periods, any short-term rate ceiling would have to be so high as to provide little protection to any shipper. Rather than using a high and artificial price ceiling as back-up protection, as in *Environmental Action,* the Commission in this rule retained cost-based regulation of pipeline capacity as back-up protection. This approach provides better protection to short-term shippers than an artificial price ceiling without compromising the efficiency of capacity trading as a price ceiling would.

The rehearing requests further contend that the Commission ignored its own precedent in not conducting a detailed market analysis before permitting releasing shippers to charge market based rates. [39] The prior proceedings were in a different posture from this rulemaking because the proceedings cited all included applications by pipelines to remove cost-of-service regulation from their services. Moreover, while the Commission has found that a market power study is one method for permitting market based rates,[40] it did not indicate that it was the exclusive method or that other regulatory steps could not also be justified. In this rulemaking, the Commission examined all relevant market factors and fully explained why continuation of cost-of-service rate ceilings for capacity release

[35] 734 F.2d 1486, at 1510.

[36] 734 F.2d 1486, at 1508.

[37] 10 F.3d 866, 870.

[38] 996 F.2d 401, 410.

[39] The rehearing requests cite, *e.g.,* Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4633 (Feb. 7, 1996), 74 FERC ¶ 61,076 (1996), Koch Gateway Pipeline Company, 85 FERC ¶ 61,013 (1998), *reh'g denied,* 89 FERC ¶ 61,046 (1999); Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996) FERC Stats. & Regs. Proposed Regulations [1988–1998] ¶ 32,520 (July 31, 1996) (final rule never issued); Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, 76 FERC ¶ 61,120 (1996) (program terminated).

[40] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

transactions no longer meets the needs of the market and that a more flexible approach, relying on competition and other regulatory controls, was necessary.

Indicated Shippers maintain that the Commission's relaxation of price ceilings in this case is inconsistent with its policy with respect to electric transmission service where Indicated Shippers maintain the Commission continues to regulate on a cost-of-service basis. In fact, however, the Commission has not limited pricing for short-term electric transmission service to embedded cost-of-service rates. As the Commission has done in this rule, the Commission has recognized that neither historic nor incremental costs are an appropriate ceiling for short-term electric transmission services and has permitted utilities to sell short-term transmission services at the higher of embedded or opportunity cost without a price cap.[41] With respect to reassignments of electric transmission capacity of one year or less, the Commission has similarly found that reassignments can be made at the reassignor's opportunity cost without an embedded cost or incremental price cap.[42] In this rule, the Commission followed essentially the same policy it has applied to electric regulation by removing embedded cost price ceilings for short-term capacity releases, so that releasing shippers can effectively obtain the opportunity costs for capacity. A releasing shipper will be able to sell its capacity for a rate that exceeds the value to the shipper of the next best use of its capacity. A combination of competition and other regulatory controls protect against short-term capacity release rates becoming unjust and unreasonable.

Those requesting rehearing further contest what they term the Commission's determination that shippers in the short-term capacity release market are not entitled to protection. They maintain that short-term shippers may be captive to particular pipelines and that, in any event, all shippers are entitled to protection under the Natural Gas Act.

In Order No. 637, the Commission recognized that its principal responsibility is to protect captive customers holding long-term contracts.[43] Short-term customers, even if connected to only one pipeline, are not captive since given the nature of interruptible and short-term release services they do not have to pay for service when they want to use alternatives and have no guarantee that the pipeline will provide service when they want it. Prior to Order No. 636, the use of 100% load factor interruptible rates and selective discounting, maximized the revenue from short-term shippers and reduced the costs borne by captive firm customers.[44] Lifting of the price ceiling for short-term capacity release transactions restores the balance between short and long-term shippers, but in a way more consonant with competitive pricing. Short-term shippers that currently pay lower prices during off-peak periods as a result of competition created by capacity release will now face appropriate rates for peak period capacity when capacity is most in demand and prices in a competitive market would be higher to properly allocate the capacity. At the same time, this will enable releasing shippers to derive greater revenue for short-term releases during peak periods to help offset the low rates they receive during off-peak periods.

The Commission did not find, as the rehearing requests suggest, that short-term shippers are not entitled to any protection. It found only that just and reasonable regulation of customers in the short-term market needs to be tailored to the realities of that market.[45] Short-term customers, by the very nature of the service for which they are contracting, expressly take the risk that they may have to forgo the use of gas entirely if short-term capacity is not available when they need it. As the country learned very well during the period of price controls on interstate gas, customers receive little benefit from regulated prices if they are unable to acquire the gas or transportation service when they need it. Short-term customers will receive more protection if they can obtain capacity when they need it, even by paying higher prices, than if they are unable to obtain the capacity they need when they are willing to pay the market price for such capacity. Short-term customers desiring greater price security can purchase long-term capacity at a regulated rate from the pipeline. Even if capacity is not immediately available, the pipeline has the incentive to construct new capacity when shippers are willing to pay for the cost of construction, and the Commission is committed to reviewing closely a pipeline's decision to refuse to construct capacity when the customer is willing to pay the costs.

In short, the static cost-of-service rate regulation that the Commission has applied to long-term capacity commitments is not applicable to short-term released capacity. The Commission, therefore, has decided to try a more flexible regulatory approach to the short-term release market that does not rely upon artificial pricing ceilings, but instead relies on competition and other regulatory controls to minimize the ability to exercise market power as well as relying on enforcement proceedings to control the abuse of market power if it should occur. Such a regulatory approach is better geared to the needs of the short-term market than the maintenance of static, regulated prices that bear little relationship to market realities, that distort shipper's options, and that contribute to a less efficient market.

The Commission will discuss below the protections against the exercise of market power that justify the removal of the rate ceiling for short-term capacity release transactions.

(2) Protections Against the Exercise of Market Power

Competition from Releasing Shippers, Monitoring, and Enforcement. The availability of capacity from alternative firm capacity holders, as well as the pipeline, constitutes a strong protection against the exercise of market power by any one holder of firm capacity. Capacity release has become an ever more vibrant part of the gas marketplace since Order No. 636. By permitting releasing shippers to use secondary points and to segment their capacity, capacity buyers have the ability to choose among numerous alternative suppliers of capacity. Indeed, as shown above,[46] competition in the capacity release markets already has been successful in keeping, on average, the rates for released capacity below the

[41] Florida Power & Light Company, 66 FERC ¶ 61,227, at 61,527 (1994), on *reh'g* 70 FERC ¶ 61,158 (1995). Opportunity costs reflect the cost to the utility of its next best alternative sale.

[42] California Independent System Operator Corporation, 89 FERC ¶ 61,153, at 61,436 (1999).

[43] *United Distribution Companies* v. *FERC*, 88 F.3d 1105, 1123 (D.C. Cir. 1996) (Commission's prime constituency is captive customers vulnerable to the pipeline's market power). *See Maryland People's Counsel* v. *FERC*, 761 F.2d 780, 781 (D.C. Cir. 1985); *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944); *Associated Gas Distributors* v. *FERC*, 824 F.2d 981, 995 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988).

[44] *See Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1011 (D.C. Cir. 1987) (selective discounting benefits captive customers by making a contribution to fixed costs); *Mobil Oil Co.* v. *FERC,* 886 F.2d 1023 (8th Cir. 1989) (100% load factor interruptible rates ensure that interruptible service pays the cost of providing that service); *Elizabethtown Gas. Co.* v. *FERC,* 10 F.3d 866, 871–72 (D.C. Cir. 1993) (affirming use of 100% load factor interruptible rates); *Orange and Rockland Utilities, Inc.* v. *FERC*, 905 F.2d 425, 427–29 (D.C. Cir. 1990) (affirming use of 100% load factor interruptible rates).

[45] Permian Basin Area Rate Cases, 390 U.S. 747, 787 (1968) (Commission empowered to prescribe different requirements for different classes of persons or matters).

[46] *See* Figure 1, at 20.

maximum rates during both peak and off-peak periods, demonstrating that competition will significantly limit releasing shippers' ability to exercise market power during peak periods even without a price ceiling. Further, the data cited in Order No. 637 from the bundled sales market show that in a market without price ceilings, competition has generally maintained the value of transportation at rates below the current maximum ceiling rate.[47] The data show that the only time rates increase above the cost-based maximum ceiling rate is during peak demand periods, when higher prices are needed to effectively allocate capacity.[48] Thus, the evidence does not provide a basis for the fear of those seeking rehearing that removal of price ceilings will lead to the ability of shippers to sustain price increases above cost-based rates.

The competition among multiple capacity holders and the pipelines to sell capacity has, at the very least, significantly lessened the potential for the exercise of market power by releasing shippers, so that case-by-case review of allegations of market power is appropriate and far less disruptive to the overall workings of the market than application of static cost-based regulation that does not comport with the way in which short-term markets operate. The Commission has revised its reporting and internal monitoring capability as well as its complaint procedures to better enable it and the industry to monitor the marketplace and conduct case-by-case review of allegations of abuses of market power in the release market.

Regulated Pipeline Alternatives. In this rule, the Commission only took an interim step to improve efficiency by removing the rate ceiling for short-term capacity release transactions. It decided not to change the existing regulation of pipelines to provide additional protection against the exercise of market power in the short-term capacity release market. Market power can be exercised in two basic ways, through withholding of capacity and price discrimination. Firm shippers cannot successfully withhold capacity from the market, because any capacity they do not use is available from the pipeline as interruptible service at a cost-based rate. Shippers also can purchase long-term firm capacity from the pipeline at a regulated rate. In addition, the Commission continues to regulate pipeline penalty levels in the short-term market which effectively establishes a rate ceiling for capacity release transactions. A shipper will not pay more for capacity than the penalty it would pay if it simply shipped gas in excess of its contract rights.

In traditional market analysis, one looks at the number and market shares of potential alternative suppliers and other factors such as barriers to entry to determine whether competition between those suppliers is sufficient to prevent explicit or tacit collusion to reduce output in order to raise price.[49] If a large enough number of firms are in competition for buyers' business, buyers, when faced with an effort to raise price by any one firm, will have alternative suppliers who have an incentive to increase their own sales (and hence total output) by charging a lower price. While the Commission has used competitive market analysis to determine whether to permit market-based rates, such an analysis is time consuming, difficult and is not subject to slide rule precision. Disputes frequently arise over issues, such as product and geographic market definition, the existence of barriers to entry, and the number and market positions of alternative suppliers needed to protect against market power. When the Commission previously instituted a pilot program attempting to use market analysis to relax price ceilings in the short-term market, disputes over all these issues arose.[50]

While market analysis looks principally at market structure and barriers to entry in an attempt to discern whether firms will have incentives to reduce output to raise price, the Commission's regulations protect against the exercise of market power by directly limiting the withholding of available transportation capacity through the requirement that pipelines sell all available capacity at a regulated rate. There is only a fixed amount of capacity in the short-term capacity market. Any capacity not sold or used by a firm shipper is, by definition, available from the pipeline as interruptible or short-term firm capacity. In these circumstances, if firm shippers attempt to exercise market power by raising price above the regulated rate, buyers can acquire the capacity from the pipeline at the regulated rate. Because no capacity can be withheld from the market above the regulated maximum rate and buyers can always obtain capacity from the pipeline on a non-discriminatory basis, market power cannot be exercised when rates exceed the cost-of-service price ceiling, and consequently the resulting price is the competitive price needed to equate supply and demand and allocate the available capacity. The requirement that a pipeline sell its capacity at the regulated maximum rate prevents tacit collusion between the pipeline and the shipper to withhold capacity to raise price above the ceiling rate, and effectively limits the releasing shipper's ability to exercise market power at prices above the ceiling rate.

Short-Term Pipeline Capacity. Those requesting rehearing contend that maintenance of rate regulation for pipeline interruptible capacity is insufficient to restrain market power in the capacity release market because pipeline interruptible capacity is not an adequate substitute for firm released capacity given its lower priority.[51] In many cases, releasing shippers impose recall rights on released capacity, so it is, in effect, an interruptible service. Moreover, pipeline interruptible capacity does not need to be identical to released capacity to be a good substitute, sufficient to restrain the exercise of market power.[52] In this case, there is, in effect, only one product, pipeline capacity, and several ways to obtain it, firm released capacity, short-term firm and interruptible capacity from the pipeline. These methods of obtaining capacity directly compete with each other: any firm capacity not released is available as interruptible transportation from the pipeline. Even though interruptible capacity is of lower priority than firm released capacity, the requirement that the pipeline sell all of its interruptible transportation at the maximum rate inhibits a releasing shipper's ability to exercise market power, because the releasing shipper cannot withhold capacity from the market. If the releasing shipper does not

[47] Order No. 637, 65 FR at 10174–80, figures 5–7, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,271–74, figures 5–7.

[48] Figure 7, for example, shows that the value of transportation during January 2,000 rose only during the time period when temperatures turned colder. Order No. 637, 65 FR at 10178–79, figure 7, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,273–74, figure 7.

[49] Department of Justice-Federal Trade Commission, Horizontal Merger Guidelines, ¶ 0.1 (small number of firms can approximate the performance of a monopolist, by either explicitly or implicitly coordinating their actions).

[50] Compare Secondary Market Transactions on Interstate Natural Gas Pipelines, 77 FERC ¶ 61,183 (1996) *with* Transwestern Pipeline Company, 78 FERC ¶ 61,200 (1997) (disputes over whether market power can be exercised over single lateral on pipeline).

[51] Rehearing Requests by Amoco, Indicated Shippers, NGSA.

[52] Department of Justice—Federal Trade Commission, Horizontal Merger Guidelines, ¶ 1.11 (inquiry is whether alternative products would inhibit the ability of a monopolist of a single product to sustain a price rise); *U.S.* v. *E.I. Dupont De Nemours & Co.,* 351 U.S. 377 (1956) (product market determined by cross-elasticity of demand between different products).

use its capacity (attempts to withhold capacity), that capacity becomes available as interruptible service which the pipeline must sell at a just and reasonable rate. The pipeline also is required to sell short-term firm service to the extent all of its firm service is not fully subscribed. Since the pipeline is required to sell all of its available capacity at the maximum rate, it cannot collude with the releasing shipper to withhold capacity from the market.

Long-Term Pipeline Capacity. Amoco and Indicated Shippers maintain that the ability to purchase long-term capacity from the pipeline at just and reasonable rates is not a reasonable protection against market power. They maintain that the pipeline may not have long-term capacity available and that short-term prices may only be high on a sporadic basis, not sufficient to induce the pipeline to build additional capacity.

Maintaining cost-of-service regulation on long-term pipeline capacity provides protection against the exercise of market power by releasing shippers in the short-term market in two ways. On pipelines with unsubscribed firm capacity, the availability of capacity from the pipeline provides an alternative, at a regulated rate, to buying short-term capacity from releasing shippers. Even when pipelines are fully subscribed, the pipelines' ability to construct additional capacity will discipline the ability of releasing shippers to sustain rates in the short-term market above the marginal cost of construction. If prices in the short-term capacity release market generate revenues that would be above the cost of constructing new capacity, the pipeline can capture such potential profits only by adding capacity to serve the demand.[53] The pipelines' ability and incentive to undertake such construction reduces the incentive for releasing shippers' to attempt to raise prices above the marginal cost of new construction. In many cases, capacity can be added quickly simply by adding compression to the system.

The rehearing requests suggest that short-term prices may only sporadically exceed the maximum rate so that the rise in price is not sufficient to attract new pipeline investment. But if prices rise only sporadically, the price change is most likely due to an increase in demand relative to supply, creating scarcity rents, rather than the sustained exercise of market power. In any event, the sporadic nature of such increases suggests that, even if market power is present, any harm from removing the rate ceiling would be relatively minor, since it would occur only during those short periods when prices exceed the maximum rate. Any possible harm from short-term higher prices is outweighed by the greater efficiency created by a more effective capacity trading market that would permit those short-term shippers who most urgently need capacity during peak periods to have a better opportunity to obtain capacity. As discussed above, if short-term prices rise frequently enough to make the construction of additional pipeline capacity profitable, the pipeline will have the incentive to build that capacity, which provides short-term shippers with an additional capacity option.

Process Gas Consumers suggest that long-term capacity may not be a viable alternative for industrial firms because, unlike marketers and LDCs, who are in the gas business, industrial firms' principal business is not gas and their ability to purchase long-term transportation contracts is often inhibited by business planning cycles of five years or less. But those are the kinds of choices shippers have to make as the gas market becomes more competitive. If shippers want price security, they need to share the risks of new construction with the pipelines; they cannot require that pipelines fully absorb all those risks. Shippers that are unwilling to undertake that commitment can purchase gas from marketers or can choose to participate in the short-term market, with full recognition of the price fluctuations inherent in that choice. Moreover, the point here is not that any one class of customer would or would not subscribe to new construction. If short-term prices produce revenues high higher than the cost of new construction, the pipeline has the incentive to construct new capacity to capture additional revenue, and shippers who see the profit potential in obtaining that capacity will subscribe, because they can resell that capacity for more than it costs them.

Process Gas Consumers also argue that the Commission has failed to give sufficient credence to its contention that LDCs control access to the points behind their citygates and, therefore, can obviate any benefits of competitive access to that point. It contends that in the past, the Commission proposed to require that LDCs provide open access service before they could benefit from removal of the price ceilings.[54] It further contends that alternative capacity suppliers may not be meaningful alternatives to obtaining capacity from the LDC, because using secondary receipt and delivery points is not the equivalent of using primary points.

In the first place, as shown in Order No. 637, over 80% of all industrial sales are now unbundled and unbundling programs are accelerating.[55] Thus, the need for the Commission to impose its own requirements for open access service has diminished. Second, the ability of an LDC to exercise market power over pipeline capacity is limited because, if it tries to withhold capacity, that capacity becomes available from other releasing shippers or from the pipeline at a regulated rate. If an LDC holding primary firm rights attempts to exercise market power by withholding capacity, that would make the use of its points available to shippers buying capacity from other releasing shippers or from the pipeline.[56] If Process Gas Consumers is arguing that LDCs can exercise market power over their intrastate facilities by refusing to schedule gas for a shipper behind the city-gate, state regulatory agencies have primary responsibility for policing LDC activity over their own facilities. Moreover, any refusal by an LDC to schedule gas on behalf of a shipper would be readily apparent and, if such an abuse relates to interstate transportation, the Commission can remedy such problems through individual case procedures. There is no need to retain the price ceiling for the entire class of LDC shippers based only on speculation about whether some LDCs will refuse to schedule capacity when any such abuses can be addressed in individual cases.

The National Association of Gas Consumers maintains that lifting of the price ceiling could lead to speculative pricing. As explained in Order No. 637, however, high prices during peak periods are a legitimate reaction to supply and demand forces. As long as capacity is not being withheld from the market, high prices during peak periods are the competitive response to market conditions and will result in a more

[53] The pipeline cannot recover any of the potential profit by raising price because its rates are capped.

[54] Process Gas Consumers cites to Secondary Market Transactions on Interstate Natural Gas Pipelines, Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, 76 FERC ¶ 61,120 (1996).

[55] Order No. 637, 65 FR at 10158–60, 101–68 III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,251–52, 31,261.

[56] For example, if one capacity holder has firm primary point capacity of 100 MMBtu and does not use 50 MMBtu of that capacity, other shippers can schedule delivereis to the same point using secondary delivery point rights or interruptible service. This makes it difficult for the shipper holding the primary delivery point rights to withhold capacity.

efficient allocation of capacity to those valuing it the most. Indeed, it is the current price regulated system that can create the more inefficient system and be the most harmful to gas consumers, because regulated rates during peak periods may prevent those shippers who most need capacity to serve their customers from obtaining capacity when they need it most. As shown by the period of rate regulation of wellhead prices, the maintenance of regulated rates that do not fit with market conditions can harm consumers by distorting price signals and thereby inhibiting the efficient allocation of resources. In any event, removal of rate regulation for capacity release transactions will have limited effect on pricing behavior, since there is no rate ceiling for bundled gas transactions and firms can speculate in the gas market. Rather than exacerbating pricing problems during peak periods, the lifting of rate ceilings on capacity release transactions should help to provide shippers with more options for dealing with those problems.

Amoco and Indicated Shippers maintain that the Commission has not provided adequate protection against capacity withholding when the market rate falls below the regulated maximum rate for pipeline capacity. They argue that at rates below the maximum rate, the pipeline is under no obligation to sell all available capacity which could permit capacity withholding.

This complaint is unrelated to the regulatory changes in Order No. 637. The Commission made no regulatory changes with respect to its policy regarding pipeline and release rates that are below the maximum rate. As shown above, the competition between firm shippers and the pipelines already has significantly limited the ability of releasing shippers to withhold capacity and to selectively discount during the off-peak period when rates are below the maximum rate. Moreover, Commission policy since Order No. 636 has been to permit pipelines and releasing shippers to refuse to discount.[57] The Commission has not changed that policy here. The regulatory changes in this rule, therefore, result in no additional harm to short-term shippers when rates are below the maximum rate and promise greater efficiency and options for shippers during peak periods.

Mitigation Measures. Amoco, IPAA, and Indicated Shippers contend the Commission erred when it relaxed price ceilings, because it failed to adopt further measures to mitigate the exercise of market power. Amoco contends the fundamental error in Order No. 637 was the failure to require an auction, as proposed in the NOPR, to ensure capacity is allocated in an unbiased manner to promote competition while mitigating market power. Indicated Shippers contend the Commission erred by not eliminating the exemption from the posting and bidding requirements for pre-arranged deals for greater than one month at or above the maximum lawful rate and by not revising its regulations to restrict releasing shippers' ability to impose recall conditions. AGA and a number of LDCs also request clarification as to whether the exemption for releases at the maximum rate continues to apply.[58]

With respect to Amoco's argument, the Commission, in fact, will continue to require bidding for capacity release transactions, which is, in effect, a form of capacity auction. Since Order No. 636, the Commission has required posting and bidding for capacity release transactions as protection against the potential for undue discrimination and the exercise of market power in the capacity release market.[59] Under Commission regulations, all capacity releases for more than 31 days and all rollovers of releases of 31 days or less are subject to the bidding process. In Order No. 636, the Commission permitted an exemption from the bidding process for short-term releases of less than a month, because of a concern at that time that the pipeline's auction process could be too administratively cumbersome for short-term transactions.[60]

As explained in Order No. 637, electronic commerce is growing, particularly in the gas industry, and may well represent the future, but the comments in this rulemaking, including comments by those seeking rehearing,[61] maintain that the electronic capabilities of some pipelines today still do not permit a mandatory requirement for a daily auction and that a daily auction might well create administrative difficulties of its own. Although the Commission strongly encourages both pipelines and third parties to begin gaining experience with the use of electronic auctions as a means of allocating available capacity, the Commission determined, based on the rulemaking comments, that it was not the time to impose an across-the-board requirement for a mandatory daily auction. Nonetheless, the pre-existing posting and bidding requirements for capacity release will continue to promote fair and equitable capacity allocation and inhibit the exercise of market power, because any transactions of longer than a month are subject to the auction and transactions of less than a month (while initially exempt) will be subject to the auction if they are continued or rolled over.

Indicated Shippers contend the Commission should have eliminated the provision (contained in the current regulations) that exempts from the bidding requirements pre-arranged capacity release transactions at the maximum rate. Indicated Shippers argue that maintaining this exemption prevents non-affiliate replacement shippers from fairly competing in an open capacity market. AGA and a number of LDCs contend in their clarification requests that the exemption from posting and bidding for releases at the maximum rate continues to apply.[62]

Although there is apparently confusion on this point, the Commission did eliminate this exemption in Order No. 637. Section 284.8(h) of the regulations contains an exemption from the posting and bidding requirements for capacity release transactions at the ''maximum tariff rate applicable to the release.''[63] Since the maximum tariff rate is no longer applicable to short-term capacity release transactions, the exemption does not apply as long as the rate ceilings are waived. Nevertheless, to ensure the regulations are clear, the Commission will add the following to section 284.8 (i) of the regulations: ''The provision of paragraph (h)(1) of this section providing an exemption from the posting and bidding requirements for transactions at the applicable maximum tariff rate for pipeline services will not apply as long as the waiver of the rate ceiling is in effect.'' Section 284.8 (i)

[57] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,629 (Aug. 3, 1992) (pipelines are not required to discount or accept bids at less than the maximum rate), 636–B, 61 FERC ¶ 61,272, at 62,027–28 (pipelines not required to discount transportation rate), *aff'd, United Distribution Companies* v. *FERC,* 88 F.3d 1105, 1141–42 (D.C. Cir. 1996).

[58] Atlanta Gas Light, UGI, Keyspan, and Washington Gas also request clarification of this point.

[59] 18 CFR 284.8.

[60] 18 CFR 284.8(h); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,553–54 (Aug. 3, 1992).

[61] Comments by Process Gas Consumers.

[62] Atlanta Gas Light, UGI, Keyspan, and Washington Gas also request clarification of this point.

[63] 18 CFR 284.8(h).

already contains a provision specifying that posting and bidding will apply to any rollovers or continuations of capacity release deals of 31 days or less.[64]

Thus, under the Commission regulations, all capacity release transactions of more than 31 days will be subject to the posting and bidding requirements. For transactions of 31 days or less, shippers can enter into prearranged deals that are not subject to the posting and bidding requirements. But all rollovers or continuation of such deals will be subject to posting and bidding.[65]

UGI and Atlanta Gas Light seek rehearing of the decision to eliminate the maximum rate exemption from the posting and bidding requirements, claiming that continuing the exemption is important to their retail unbundling initiatives at the state level.

In Order No. 637, the Commission specifically continued the existing posting and bidding requirements for capacity release transactions to ensure that capacity is equally available to all shippers and to protect against undue discrimination and the exercise of market power.[66] Permitting releases at or above the maximum rate to be exempt from the posting and bidding requirements would defeat the very purpose of requiring posting and bidding by enabling releasing shippers to consummate pre-arranged transactions with certain shippers without giving other shippers an opportunity to compete for the capacity. The original justification for exempting pre-arranged deals at the maximum rate was that, as long as a rate ceiling was in effect, no other shipper could beat the pre-arranged deal and bidding and posting requirements would be superfluous.[67] When the maximum rate ceiling is lifted, posting and bidding becomes necessary to protect against undue discrimination and to ensure that capacity is properly allocated to the shipper placing the greatest value on the capacity.

The imposition of posting and bidding will not prevent LDCs from entering into pre-arranged deals under state unbundling programs, as the clarification and rehearing requests suggest. LDCs can still enter into pre-arranged transactions of less than one year and the pre-arranged shipper is guaranteed to receive the capacity as long as it is willing to match the highest rate bid for that capacity. LDCs also can enter into pre-arranged deals exempt from the posting and bidding requirements by entering into a pre-arranged release for one year or more at the maximum rate.

In individual cases where an LDC considers a further exemption from the posting and bidding requirement essential to further a state retail unbundling program, it may request the Commission to waive the regulation, permitting the LDC to consummate pre-arranged deals at the pipeline's maximum tariff rate without having those transactions subject to competitive posting and bidding. If the LDC seeks such a waiver, it must be prepared to have all of its capacity release transactions and any re-releases of that capacity limited to the applicable maximum rate for pipeline capacity. The LDC should not be able to sell to some shippers without a rate ceiling, protecting other favored shippers from the bidding process. All such waiver applications must either be filed jointly with the appropriate state regulatory authority or must include a verified statement by that authority stating why the request is necessary to promote a legitimate state goal.

Indicated Shippers also contend the Commission should eliminate the right of releasing shippers to impose recall conditions on releases.[68] They maintain that releasing shippers can abuse their recall rights by recalling the capacity from third parties and then reselling it at higher prices, while not recalling capacity from affiliates. The Commission sees no basis for prohibiting releasing shippers from imposing recall rights. Recall rights add capacity to the release market by enabling shippers to release capacity when they do not need it, and then recall the capacity when necessary for their needs. Without the ability to impose recall rights, releasing shippers may be reluctant to release capacity out of concern that weather patterns will change. If replacement shippers are concerned about abuse of the recall process in the scenario envisaged by Indicated Shippers, they can refuse to enter into recallable release transactions unless the releasing shipper guarantees that, if a recall is exercised, it will not be able to resell that capacity. Allegations concerning abuse of recall conditions also can be examined by the Commission through the complaint process.

Potential Affiliate Abuse: Amoco, Process Gas Consumers, NGSA, and Ohio Oil and Gas Association contend that removing the price ceiling for released capacity provides an opportunity for affiliate abuse because it creates an incentive for the pipeline corporate entity to transfer capacity from the pipeline to its affiliate, which is not subject to the price ceiling.

Pipelines cannot simply transfer capacity to an affiliate. Pipelines are required to allocate their capacity on a non-discriminatory basis and must sell the capacity to the shipper bidding the highest net present value for the capacity. Thus, if unaffiliated shippers project that profits can be made by selling short-term capacity above the price ceiling, they can bid against the affiliate to obtain capacity from the pipeline.[69]

Moreover, as the Commission explained in Order No. 637, the removal of the rate ceiling effects little change from the market today because pipeline affiliates are currently able to make bundled gas sales where the transportation component of the transaction is not subject to the rate ceiling. Removal of the rate ceiling, coupled with the reporting requirements, therefore, may make these transactions more transparent, because affiliates will have a greater incentive to release transportation and pipelines must post such transactions. The rate ceiling on pipeline capacity also will continue to protect against the exercise

[64] 18 CFR 284.8(i) provides that any rollovers or extensions are subject to the posting and bidding requirements.

[65] Under section 284.8(h)(2), a shipper can enter into another short-term (31 days or less) release to the same replacement shipper without posting and bidding if 28 days have passed since the previous release to that shipper.

[66] Order No. 637, 65 FR at 10182, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,279. *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950 at 30,555 (Aug. 3, 1992) (posting and bidding needed to give all parties an opportunity to obtain capacity by bidding the highest rate).

[67] Release of Firm Capacity on Interstate Natural Gas Pipelines, Order No. 577, 60 FR 16979 (Apr. 4, 1995), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 31,017, at 31,316 (Mar. 29, 1995) (''when the pre-arranged deal is at the maximum rate, no other shipper can make a better bid for that capacity'').

[68] A recall condition is a term in the release that enables the releasing shipper to use the capacity in certain circumstances, for example, if the temperature drops to a point where the releasing shipper needs the capacity to serve its own customers.

[69] There may be little incentive for the affiliate to inflate the net present value of its bid, for example, by increasing the contract duration. The unaffiliated shipper would be willing to bid a net present value up to its expectation of the value of the capacity. If the affiliate obtains the capacity by bidding a higher net present value, the corporate entity loses the opportunity to obtain the revenue the unaffiliated shipper would have paid. As long as the expected future value of the capacity does not exceed the amount bid by the unaffiliated shipper, the corporate entity cannot expect to recoup the revenue it would have received from the unaffiliated shipper.

of market power in the event capacity is held by a pipeline affiliate. The pipeline affiliate, like any other firm shipper, will be unable to withhold capacity and exercise market power because, if the affiliate refuses to sell released capacity, buyers can obtain that capacity as interruptible transportation at a just and reasonable rate from the pipeline.

Amoco suggests that a pipeline and an affiliate or partner could conspire to withhold capacity through a number of artifices: nominating gas into the pipeline but not delivering it; purchasing park and loan services at a low rate; moving gas to market area storage or line pack; or having the affiliate use the unreliability of interruptible service as a threat to induce the buyer to purchase released capacity at a higher than competitive price. NGSA similarly contends that a firm shipper can create artificial periods of peak demand by nominating, but not using just enough capacity to drive up demand for capacity while decreasing the availability of interruptible transportation.

All of these techniques would be costly to implement, costs which would limit the incentive to attempt them. The pipeline's sale of parking and loan service at a lower than market rate costs the pipeline the opportunity cost of selling that service to someone else. Nominating gas, but not taking delivery, could result in scheduling or imbalance penalties, and to the extent that capacity is not used, the pipeline would still have the obligation to sell the unused capacity as interruptible or short-term firm service. Moving gas to storage or line pack when it is not truly needed results in costs to the shipper for the gas and transportation and the consequent reduction in storage and line pack flexibility. No protection against market power can be considered absolute; even the market analysis advocated by those seeking rehearing cannot perfectly predict whether market power may be exercised. But the benefits of removing the rate ceiling here outweigh the limited potential for the exercise of market power inherent in these scenarios. Further, the Commission stands ready to investigate complaints about such abusive practices.

In Order No. 637, the Commission recognized that affiliate transactions could be troublesome in one respect: where the affiliate holds large quantities of pipeline capacity and the pipeline determines not to construct new capacity in order to increase scarcity rents for the affiliate.[70] The Commission found that this situation exists today, with affiliates able to make bundled sales to reap scarcity rents, but there seems little indication that profits from scarcity exceed those that can be earned by the pipeline from new construction, since pipeline construction applications have not noticeably declined. Because of the possibility of such affiliate abuse, however, the Commission will be particularly sensitive to complaints that pipelines, on which affiliates hold large blocks of capacity, are refusing to undertake construction projects when demand exists and will be prepared to take remedial measures in cases where such concerns are established.

Process Gas Consumers and NGSA maintain that the Commission's reliance on historic construction information ignores the current trend toward greater concentration in the industry and the concentration of pipeline capacity in the hands of affiliates. As a result, NGSA contends that the Commission should condition the removal of the price ceiling for pipeline affiliates on the pipeline's including a tariff provision requiring it to put in interconnections and to construct capacity when requested by customers willing to pay the costs of construction.

NGSA's concern with interconnections already has been addressed by the Commission. The Commission's policy requires pipelines to provide interconnects to any shipper that constructs, or pays for construction of, the facilities needed for the interconnection, as long as the interconnection does not adversely affect pipeline operations, violate applicable environmental or safety regulations, or violate right-of-way agreements.[71] With respect to refusals to build additional mainline capacity, the Commission can take remedial action when warranted. Among the potential remedies that could be considered would be limiting the rates at which the affiliate can release capacity, limiting the amount of capacity the affiliate can hold, prohibiting the affiliate from holding capacity on its related pipeline, or, as NGSA suggests, conditioning the affiliate's continued right to exceed the price ceiling on the pipeline's agreement to construct capacity for which the shipper is willing to pay.

More Limited Experiment. Recognizing the value of experimental programs, Process Gas Consumers contends that if the Commission chooses to proceed with an experiment in lifting price ceilings, it should narrow the scope of the experiment to select markets where competition appears to be the most robust and to place some form of ceiling on the prices that can be charged.

The Commission sees little value in further limiting the scope of the waiver. First, as discussed above, the Commission has concluded that there are sufficient protections to go forward with the relaxation of the price ceiling for short-term capacity release transactions in all markets. Second, the Commission finds that limiting the program in these ways will eliminate information that is needed to evaluate the effects of price cap removal and is otherwise infeasible. The impact of removing price ceilings will occur principally in markets where, due to weather conditions, demand increases and capacity becomes scarce. Such markets cannot be anticipated in advance, so that a geographic or other limitation may yield little useful information by the end of the two-year period. Limiting the waiver only to those markets that are already presumed to be competitive similarly will provide little information on how markets across the board behave. Such a limitation would be tantamount to conducting an experiment with only a control group, excluding those markets whose performance is most important to monitor. To evaluate the waiver, the Commission needs to be able to examine the effects of removing the price ceiling on all markets, both those which may appear competitive and those with higher concentration ratios.

2. Price Ceiling for Pipeline Capacity

CNG, Great Lakes, Kinder-Morgan, Koch, and Williams contend the Commission erred in not removing rate regulation for pipeline short-term services. They maintain that if the market is workably competitive enough to permit lifting of the price ceiling for capacity release transactions, it also should be sufficiently competitive to lift the price ceiling for pipeline short-term services. Kinder-Morgan and Koch maintain the regulation of pipeline services is not justified as a protection against withholding of capacity by releasing shippers because firm shippers can manipulate the nomination process to withhold capacity.

The Commission in this rule determined to make only incremental changes in its regulatory policies to promote efficiency, establishing an ongoing process to consider whether more fundamental changes should be adopted. Since unbundling, the regulation of pipeline services has been the basic protection against the potential exercise of market power over

[70] Order No. 637, 54 FR at 10186, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,287.

[71] Panhandle Eastern Pipe Line Company, 91 FERC ¶ 61,037 (2000).

transportation service, and in making incremental changes to its current regulatory system, the Commission chose not to disturb this traditional protection. The Commission, therefore, waived the price ceiling only for capacity release transactions, as urged by a number of commenters, including pipelines, who contended that removal of rate ceilings for capacity release transactions is a first step toward the goal of revising regulatory policy to enhance efficiency.[72]

In addition, pipelines do have avenues for lifting price ceilings for their short-term services. In Order No. 637, the Commission stated that pipelines could lift price ceilings for their capacity if they implement an auction process that protects against the exercise of market power. They also can file for market based rates under the Commission's Alternative Rate Design Policy if they can demonstrate that sufficient competition exists in the short-term market so that the removal of rate regulation for all short-term services will not permit the exercise of market power.

3. Implementation of the Waiver

Several rehearing requests seek rehearing or clarification regarding the way in which the waiver of the rate ceiling for short-term release transactions will be applied.

a. Refund Requirement. IPAA and Indicated Shippers contend that the Commission should impose a refund requirement in the event the Commission or a reviewing court concludes the removal of rate ceilings for short-term released capacity is unlawful. The imposition of a refund requirement would run counter to the purpose of waiving the rate ceiling. One of the reasons for lifting the rate ceiling was to give releasing shippers an incentive to move transactions from the opaque bundled sales market to the transparent capacity release market, so that the Commission can obtain useful data about the effect of lifting the price cap during the two-year waiver period. If releasing shippers know they are subject to a potential refund requirement, they will be less likely to use capacity release as opposed to making bundled sales.[73] Moreover, an across-the-board refund condition is not necessary because, should the Commission determine in an individual case that a releasing shipper has abused its market power, the Commission has the authority under section 16 of the NGA to take appropriate remedial action that can include remedies to prevent unjust enrichment.[74]

b. Compliance with Reporting Requirements. NGSA and Indicated Shippers contend the Commission erred in lifting the price ceiling before pipelines comply with the tariff and reporting requirements established in Order No. 637. They contend that the tariff changes, such as enhancing segmentation, and the reporting requirements are intended to enhance competition and permit better monitoring of the marketplace, and, accordingly, they maintain the waiver of the rate ceiling should be postponed until these enhancements are in place.

The Commission finds no reason to delay removal of the price ceiling to await pipeline compliance with other aspects of Order No. 637, particularly given the efficiency benefits identified in Order No. 637 that open capacity trading will bring. The revised reporting requirements primarily are to obtain more information about pipeline capacity and to make the reporting of pipeline transactions conform with the existing reporting requirements for capacity release transactions. The reporting requirements related to capacity release transactions essentially are the same as they were before, and will provide information about capacity release transactions sufficient to permit the industry and the Commission to monitor these transactions. Although the compliance filings with respect to segmentation are designed to improve the current system, many pipelines already permit segmentation on their systems and the rule contains sufficient other protections against the exercise of market power that implementation of the rate ceiling waiver need not wait for implementation of enhanced segmentation.

c. Tariff Requirement. Process Gas Consumers maintains the Commission's relaxation of the price cap violates section 4 of the NGA under the principles established in *Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*,[75] because the rates for capacity release transactions will not be on file prior to the rate being collected. The Commission finds no violation of the requirements of section 4 of the NGA. Unlike Maislin, which involved a statute providing for common carriage, section 4 of the Natural Gas Act envisions that individualized contracts will be used to establish rates for the sale of gas,[76] and such contracts can become effective even before the rates are filed with the Commission.[77]

The Commission is complying with the filing and notice requirements of section 4 by requiring the pipelines to file tariffs setting forth the conditions of capacity release and specifying that the rates for capacity release transactions will be established by contract between the releasing and replacement shippers. The Commission further is satisfying these requirements by requiring the posting of the rates on Internet web sites no later than the first nomination for service under an agreement.[78] Section 4 of the NGA provides that the Commission can establish the ''rules and regulations'' for how rate schedules will be filed, and that the Commission can waive the advance 30 day filing requirement and, in so doing, specify ''the time when they shall take effect and the manner in which they shall be filed and published.''[79] Using modern electronic methods to provide fast and effective dissemination of rates to the public using computers satisfies the statutory goal of open posting of rates.

d. Effective Date. Columbia Gas and Enron request clarification that the removal of the price ceiling does not take effect until the Commission has accepted tariff changes to remove pipeline tariff provisions inconsistent with the removal of the price ceiling. The Commission denies the request. Under Order No. 637, the rate ceiling was removed from capacity release transactions on the day the regulation (section 284.8 (i)) became effective, March 26, 2000. To reduce the tariff-filing burden on pipelines, the Commission provided them with a period of up to 180 days to remove potentially inconsistent tariff provisions, but that grace period did not change the effective date of the regulation.

[72] See Comments of AGA and INGAA.

[73] As pointed out in Order No. 637, a shipper may be willing to release its capacity where the price it can obtain for the released capacity exceeds the cost of its alternatives, such as using an alternative fuel or LNG. Order No. 637, 65 FR at 10181, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,277. If the releasing shipper is not certain that it will be permitted to retain funds above the maximum rate, it may be less likely to release the capacity or may decide to make a bundled sale instead.

[74] 15 U.S.C. 717o; *Mesa Petroleum Co.* v. *FERC,* 441 F.2d 182, 186–88 (5th Cir. 1971); *Coastal Oil & Gas Corporation* v. *FERC,* 782 F.2d 1249 (5th Cir. 1986).

[75] 497 U.S. 116 (1990).

[76] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.,* 350 U.S. 332 (1955).

[77] *Columbia Gas Transmission Corp.* v. *FERC,* 895 F.2d 791 (D.C. Cir. 1990), *City of Piqua* v. *FERC,* 610 F.2d 950 (D.C. Cir. 1979) (individual contracts can take effect even prior to filing with the Commission).

[78] As discussed below, the Commission is granting rehearing and revising its transactional reporting regulations to require posting no later than the first nomination for service.

[79] 15 U.S.C. 717c (c)–(d).

B. Peak and Off-Peak Rates

Order No. 637 provides that pipelines may institute value-based peak/off-peak rates for all short-term services as one possible method of promoting allocative efficiency that is consistent with the goal of protecting customers from monopoly power.[80] Short-term services are defined to include short-term firm and interruptible service and multi-year seasonal contracts. Implementation of peak/off-peak rates can promote several important policy goals. Specifically, peak/off-peak rates could remove one of the biases favoring short-term contracts, reduce the need for discounts and reliance on discount adjustments, and increase efficiency in short-term markets by allowing prices to better reflect demand during peak periods. Order No. 637 provides that in implementing peak/off-peak rates, the pipeline must stay within its annual revenue requirement and, thus, any increases in rates at peak must be offset by decreases in off-peak rates.

The discussion of peak/off-peak rates in Order No. 637 was a statement of policy and not a rule that imposed any requirements on pipelines or changed current Commission regulations. As the Commission explained, the current regulations [81] and Commission precedent already recognized that peak/off-peak rates have a role in the ratemaking process.[82]

The policies adopted in Order No. 637 are intended to facilitate the implementation of peak/off-peak rates with a flexible policy that will permit the use of a wide variety of peak/off-peak rate methods. As the Commission explained, there is more than one reasonable way to implement peak/off-peak rates based on value of service concepts, and some methods may work better for certain systems than others. Therefore, the Commission did not adopt any one method of developing peak/off-peak rates, but left the details of the implementation of peak/off-peak rates to individual pipelines.

Order No. 637 permits pipelines to implement peak/off-peak rates through limited section 4 *pro forma* tariff filings subject to several conditions.[83] First, if the pipeline seeks to implement seasonal rates in a limited section 4 filing, it must include in its proposal a revenue sharing mechanism that will provide for at least an equal sharing of any increased revenues with its long-term customers. In addition, Order No. 637 provides that after 12 months experience with peak/off-peak rates, the pipeline must prepare a cost and revenue study and file the study with the Commission within 15 months. Based on the cost and revenue study, the Commission will determine whether any rate adjustments are necessary to the long-term rates, and may order such adjustments prospectively.

AGA, Keyspan, New England, UGI, Amoco, IPAA, Indicated Shippers, Process Gas Consumers, NGSA, NAGC, NASUCA, INGAA, CNG, Coastal Companies, Columbia, Enron, Kinder Morgan, Koch, and The Williams Companies (TWC) seek rehearing or clarification of this portion of Order No. 637. Indicated Shippers argue that the Commission's policy statement fails to comply with the Administrative Procedure Act. Several shipper groups argue that the Commission should require pipelines to implement peak/off-peak rates in a full section 4 proceeding, while the pipelines argue that the limited section 4 procedures established by the Commission are too burdensome. The LDCs ask the Commission to clarify the application of peak/off-peak rates to captive customers.

1. Compliance With the Administrative Procedure Act

Indicated Shippers argue that insofar as Order No. 637 establishes specific mechanisms for the implementation of peak/off-peak rates, it is not a policy statement, but is a substantive rule, and that the Commission erred in promulgating this final rule without complying with the notice and comment requirements of the Administrative Procedure Act (APA).[84] Indicated Shippers state that the Commission's statement that peak/off-peak rates are allowable under the Commission's regulations may qualify as a policy statement or interpretive rule that is exempt from the notice and comment requirements of the APA,[85] but mechanisms applicable to the filings to implement peak/off-peak rates are substantive requirements of general applicability that must be subject to notice and comment.

Indicated Shippers argue that under the APA, a policy statement is ''only supposed to indicate an agency's inclination or leaning, [and is] not in any way binding on the agency.'' [86] Indicated Shippers argue that the *pro forma* tariff filing, the revenue-sharing mechanism, and the cost and revenue study, do not meet the criteria for a policy statement because they are binding on the agency and the pipelines. Further, Indicated Shippers argue that the Commission has created new rights and duties for pipelines choosing to implement peak and off-peak rates. According to Indicated Shippers, Order No. 637 creates new rights because pipelines and long-term shippers will reap the benefits of sharing increased revenues from short-term shippers; it creates new duties because it imposes on the pipeline an obligation to perform a cost and revenue study.

Further, Indicated Shippers state that the *pro forma* tariff filing and the revenue sharing mechanism fundamentally change the allocation of costs between short-term and long-term shippers, effectively increase pipeline rates, and allow pipelines to retain 50 percent of the increased rates even though this increases their allowable rate of return. Indicated Shippers argue that none of these mechanisms were mentioned in the NOPR, and therefore the parties did not have an opportunity to comment on them. Indicated Shippers argue that the Commission must provide another notice and comment period on the mechanisms identified in the Rule, including the *pro forma* tariff filing, the revenue crediting mechanism, and the cost and revenue study.

As explained in Order No. 637, peak/off-peak rates are currently available as a ratemaking methodology under the Commission's regulations and prior decisions. Nothing in Order No. 637 imposes any requirements on the pipelines—the decision to implement peak/off-peak rates is entirely voluntary—or changes Commission regulations. Thus, Order No. 637 does not promulgate substantive rules that establish a ''standard course of action which has the force of law.'' [87] The Commission did not establish a method of developing peak/off-peak rates, but left this and other issues such as the revenue sharing mechanism to be resolved in the individual proceedings. The Commission did give guidance and direction on how peak/off-peak rates could be implemented in the individual

[80] Order No. 637 at 93–106.

[81] The Commission cited 18 CFR 284.7(c)(3)(i).

[82] The Commission cited the Rate Design Policy Statement, 47 FERC ¶ 61,295 at 62,054 (1989).

[83] Order No. 637 provides that the *pro forma* filing would be noticed with comments due in 21 days, rather than the 12 days permitted for tariff filings, and the Commission would act on the proposal within 60 days.

[84] 5 U.S.C. 553(b)(3), (c).

[85] The notice and comment requirements of the APA are not applicable to ''interpretive rules, general statements of agency policy, or rules of agency organization, procedure, or practice. * * *'' 5 U.S.C. 553(b)(3)(A).

[86] Indicated Shippers cite, *inter alia, Hudson* v. *FAA,* 192 F.3d 1031, 1034 (D.C. Cir. 1999).

[87] *Pacific Gas and Electric Co.* v. *FERC,* 506 F.2d 33, 38 (D.C. Cir. 1974).

cases and therefore is properly considered a policy statement.

Indicated Shippers recognize that the discussion of peak/off-peak rates as a voluntary method of promoting allocative efficiency is properly considered a policy statement, but attempt to distinguish the revenue sharing mechanism as a separate matter that creates new rights and duties. However, the revenue sharing mechanism does not create a ''right'' to additional revenues. As the Commission explained in Order No. 637, the voluntary implementation of peak/off-peak rates, as currently permitted under Commission policy, could lead to increased revenues.[88] The Commission has found here, as a matter of policy, that a revenue sharing mechanism is necessary to provide for an equitable division of those revenues as part of the implementation of peak/off-peak rates in a limited section 4 filing.

The Commission has the discretion to direct the conduct of its proceedings. It is within that discretion for the Commission to conclude that it will use a limited section 4 rather than a full section 4 proceeding to implement peak rates and to require pipelines to submit a cost and revenue study.

In any event, Indicated Shippers and the other petitioners have had an opportunity to submit their views on the use of a *pro forma* tariff filing, the revenue sharing mechanism, and the cost and revenue study. These issues and the petitioners' substantive arguments about the appropriate mechanisms for implementing peak/off-peak rates are fully discussed below. Thus, the parties have been given a full opportunity to comment on the use of peak/off-peak rates and the appropriate method for implementing these rates. Nothing more could be accomplished through an additional notice and comment period.

2. Implementation Procedures

Since the implementation of peak/off-peak rates is likely to result in a revenue increase for the pipeline if all other rates remain the same, traditionally, the Commission would require the pipeline to file a general section 4 rate case to implement peak/off-peak rates. However, as the Commission explained in Order No. 637,[89] the traditional methods are ill-suited to this context because the rate methodology relies on a historical test period to project future throughput for each service, and there is no historical experience with peak/off-peak pricing. The Commission also pointed out that using general rate cases to implement peak/off-peak rates could be time consuming. Moreover, because the seasonal rate will be derived from the annual revenue requirement, there should be no factual issues involved in computing the rate that would require investigation or analysis. Therefore, the Commission concluded that pipelines may implement peak-off peak rates in a limited section 4 proceeding, subject to the conditions that the pipeline implement as part of its filing a revenue sharing mechanism and file a cost and revenue study within 15 months of the implementation of peak/off-peak rates.

a. The Option of a Limited Section 4 Filing. Indicated Shippers, IPAA, and NGSA argue that the Commission has not justified use of a *pro forma* tariff filing to implement peak/off-peak rates, and that peak/off-peak rates must be implemented in a full section 4 proceeding. They argue that the concerns that lead the Commission to require that term-differentiated rates must be implemented in a full section 4 proceeding apply to peak/off-peak rates as well. They assert that in both cases the change in rate method will affect other elements that affect the rates of all shippers, and in each case, the change will have an effect on throughput, demand units, discount levels and pipeline revenues. INGAA, on the other hand, asserts that arguments that rates for short-term services must be established in a full section 4 rate case fail to consider that implementation through a settlement or *pro forma* filing will reduce the level of discount adjustments in future rate cases, and that the possibility of sharing revenues will benefit long-term customers immediately.

A limited section 4 filing with the safeguards imposed by the Commission is an appropriate vehicle for implementing peak/off-peak rates. As the Commission explained in Order No. 637, the peak/off-peak rates will be derived from the pipeline's annual revenue requirement, and there should be no factual issues involved in computing the rates that require investigation or analysis in a full section 4 proceeding. Under the current method, the pipelines' rates have been derived by recovering the annual revenue requirement uniformly throughout the year. With peak/off-peak rates, the rates will be derived from the annual revenue requirement using one of several methods of measuring value at peak and off-peak. This does not require an investigation of all the pipeline's costs and rates in a full section 4 proceeding. Moreover, a meaningful review of rates under the current methodology requires one year of historical experience. The process here permits the pipeline to get that experience and then allows the Commission to review the results with a cost and revenue study, making any necessary prospective adjustments.

Moreover, a meaningful review of rates under the current methodology requires one year of historical experience in order to predict future costs and volumes. The limited section 4 process adopted by the Commission obtains the data from that experience and permits the Commission to review the results with a cost and revenue study, allowing prospective adjustments. The use of a limited section 4 proceeding to implement peak/off-peak rates is similar to a situation where a pipeline initiates new services and the Commission permits implementation of the new services in a limited section 4 proceeding in part because there is no historical experience available.[90]

Indicated Shippers, IPAA, and NGSA also argue that implementation of peak/off-peak rates should be conditioned on a pipeline filing a full section 4 proceeding in the future. Indicated Shippers and NGSA state that because some pipeline rates are already stale, implementation of seasonal rates increases the need or rate review. NGSA states that revenue crediting is not a long-term fix for pipeline rates, and only through a requirement that a pipeline at least periodically submit a rate case can the Commission fulfill its responsibility to ensure cost-based rates that approximate a pipeline's cost-based revenue requirement.

Under section 4 of the NGA, the Commission is required to ensure that rate changes proposed by the pipelines are just and reasonable, and under section 5, if the Commission finds after a hearing that the existing rate is unjust or unreasonable, it must establish the just and reasonable rate for the future. The Commission's authority under these two sections provides adequate means for ensuring that pipeline rates are just and reasonable. A requirement that pipelines file periodic rate cases is not part of the statutory scheme. The Commission imposed a three-year review requirement as part of its purchased gas adjustment (PGA) scheme—in exchange for the benefit of being able to track changes in purchased

[88] The Commission explained that because the price cap would be higher in the peak, and the pipeline might see little reduction in off-peak revenues because market prices are usually below the maximim rate, this could lead to increased reveues.

[89] Order No. 637 at 104.

[90] See Mojave Pipeline Co., 79 FERC ¶61,347 at 62,482 (1997).

gas costs which were then rapidly increasing, the pipelines agreed to a reexamination of all their costs and revenues at three year intervals. Seasonal rates are not analogous to the implementation of the PGA. Seasonal rates do not change the pipeline's existing cost of service or revenue requirement; rather they constitute a change in rate design used to recover the pipeline's existing cost of service. Thus, they are more analogous to the Commission's direction to the pipelines in Order No. 636 to implement the SFV rate design, and the court upheld the Commission's decision not to require periodic rate review in that context.[91] The authority provided the Commission under sections 4 and 5 of the NGA is adequate to enable the Commission to fulfill its responsibility to ensure that rates are just and reasonable, and a mandatory periodic rate review is not necessary at this time. Under the procedures established by the Commission, the cost and revenue study will provide a basis for determining whether the rates are stale, and, if so, the Commission would institute a section 5 proceeding to address the issue.

Indicated Shippers also argue that the *pro forma* tariff procedures would shift the burden of proof to ratepayers and eliminate the refund provision. Indicated Shippers state that under the *pro forma* procedures established by the Commission, the pipeline would have the burden of proof only with respect to whether the particular method proposed by the pipeline is just and reasonable, and that if ratepayers want to challenge aspects of the rates filed other than the peak/off-peak method itself, then such issues must be raised in a section 5 proceeding. Indicated Shippers give an example of an argument that the peak/off-peak rates will reduce the pipeline's need to discount and therefore the design units should be increased, and assert that the burden of proof would be on the shipper and not the pipeline under the procedure established by the Commission.

Order No. 637 specifically provides that the pipeline will have the burden of proving that its proposed method of implementing peak/off-peak rates is just and reasonable. As discussed above, the Commission has determined that, if the pipeline meets the conditions set forth in Order No. 637, it may implement peak/off-peak rates through a limited section 4 proceeding. Therefore, the pipeline's burden will be limited to showing that its proposed method is just and reasonable. The specific issues involved in this determination will be established in the individual cases. The pipeline will have the burden of proof regarding any changes it proposes in the limited section 4 proceeding. Because the tariff filing is *pro forma*, any other issues raised under section 5 can be resolved before the tariff sheets go into effect, so there should be no issue of refunds.

Order No. 637 provides that under the *pro forma* filing procedure, the filing would be noticed with comments due in 21 days, rather than the 12 days permitted for tariff filings, and the Commission would take action within 60 days. Several petitioners ask the Commission to modify its time table for processing *pro forma* tariff filings. UGI asserts that given the complexity of the filings, the current schedule is too compressed and asks the Commission to modify the schedule to allow 30 days for comment and 120 days for Commission action. Process Gas Consumers ask the Commission to give parties 45 days to comment and the Commission 90 days to act on the filing in order to provide time for a technical conference in each case. Process Gas Consumers state that the Commission should require a technical conference to give the parties a chance to raise concerns and possibly resolve issues prior to the filing of substantive comments.

The Commission has extended the comment period from the 12 days permitted for a tariff filing to 21 days to provide the parties with an additional time to analyze the pipeline's proposals. This extended period should be adequate to enable the parties to analyze and present their views on the pipeline's proposals. If adjustments are necessary, or if it appears that a technical conference would be beneficial in a particular case, the Commission can address these concerns in the individual proceedings.

b. Revenue Sharing. The implementation of peak/off-peak rates could lead to higher pipeline revenues from short-term services since a pipeline could reduce off-peak period price caps so that they would be close to recent discount history, and correspondingly increase peak period price caps. The Commission indicated in Order No. 637 that the process for implementing peak/off-peak rates must take into account any increased revenues. Therefore, if the pipeline seeks to implement seasonal rates in a limited section 4 filing, it must include in its proposal a revenue sharing mechanism that will provide for at least an equal sharing of any increased revenues with its long-term customers. Order No. 637 indicated the Commission's view that the revenue sharing should be limited to long-term customers and explained that under the current cost-of-service rate methodology, underpricing short-term peak capacity results in long-term customers paying higher rates because a greater share of the pipeline's costs is recovered from long-term customers.

Indicated Shippers argue that the revenue sharing mechanism is unjust and unreasonable and will result in a windfall to the pipelines, and further that it will serve as a disincentive for the pipelines to file section 4 rate cases. Indicated Shippers and NGSA argue that the Commission provided no basis for permitting pipelines to retain up to 50 percent of the excess revenues, and NGSA states that Order No. 637 is internally inconsistent because, on the one hand it justifies seasonal rates by stating that the pipeline's overall recovery will be limited to their cost-based annual revenue requirement, and on the other hand, permits the pipelines to retain up to 50 percent of the excess revenues. Indicated Shippers and NGSA assert there is no need to give pipelines an incentive to file seasonal rates since pipelines have proposed and want seasonal rates. NGSA and NASUCA argue that the Commission has given no justification for departing from the 90/10 split it used in restructuring.

Kinder Morgan, on the other hand, argues that the level of revenue sharing should be fully subject to negotiation and not limited by any predetermined rules such as a minimum level of revenue sharing.

The Commission has not required a 50/50 sharing of excess revenues, but indicated that the pipeline should include in its filing a mechanism that will provide for at least an equal sharing of any increased revenues with its customers. The Commission and the parties can work out the details of the revenue crediting mechanism in individual pipeline proceedings. In particular, the Commission suggested that the pipelines and their customers try to negotiate an equitable sharing mechanism pending the filing of the cost and revenue study required by Order No. 637. As the Commission explained in Order No. 637, the revenue sharing method should be fair to the pipelines and the customers, and pipelines are encouraged to work with their customers to develop a method that has wide support. When the pipeline files its cost and revenue study, the Commission can determine whether any changes to the long-term customers' rates are necessary. In the interim, a

[91] *UDC* v. *FERC,* 88 F.3d 1105, 1176 (D.C. Cir. 1996).

revenue sharing mechanism agreed upon by the parties provides an equitable temporary solution. Indicated Shippers and NGSA also argue that excess revenues should be shared by all customers, not just long-term customers. Indicated Shippers assert that the Commission's concerns for long-term shippers are misplaced because the Commission considered only the risks of long-term service without considering the benefits of long-term service that makes it superior to short-term service. Indicated Shippers state that on many fully-subscribed pipelines, short-term service is the only service available.

Further, Indicated Shippers state that in the past where increased revenues attributable to increased demand units are to be credited to shippers, the Commission has held that revenues should be credited to all shippers.[92] Indicated Shippers quote the Commission's rationale for deciding that IT revenues should be credited to all shippers:

> Since the purpose of interruptible revenue credits was to protect the pipeline's customers from too low an allocation to interruptible service, it follows that the customers who receive the credits should be the customers harmed by the erroneously low allocation. An allocation of too little costs to interruptible services cause both the firm and interruptible maximum rates to be too high.[93]

Indicated Shippers argue that the same reasoning applies in the present case, and that to the extent that pre-existing short-term rates were designed on the basis of fewer demand units than will arise upon the adoption of peak/off-peak rates, both the existing long-term and short-term rates are too high. Accordingly, Indicated Shippers argue, all shippers should be eligible to share in the increased revenues attributable to peak/off-peak rates, and the only customer excluded should be discount shippers whose discounts more than offset the understatement of design units underlying existing rates.[94]

NGSA similarly argues it is appropriate to credit excess revenues to all shippers because, until a pipeline's next rate case, revenue crediting acts as a substitute for adopting new discount adjustments (*i.e.,* lowering maximum rates), which will benefit all shippers, both short-term and long-term. Further, NGSA states that the Commission should not allow any credit to be paid to any pipeline affiliate.

NASUCA, on the other hand, argues that all revenues should be credited back to long-term firm shippers. NASUCA asserts that since the Commission has not departed from SFV, long-term shippers pay all the pipeline's fixed costs, and therefore they should receive the revenue offset.

It is appropriate to limit the revenue sharing to long-term customers. Crediting of excess revenues from peak/off-peak rates is not analogous to crediting of IT revenues during restructuring. In the case of IT revenues, as Indicated Shippers point out, the crediting was intended to protect the pipeline's customers that would be harmed by too low an allocation to interruptible service. Too low an allocation to interruptible service would result in all the customers' rates being too high. That is because the maximum interruptible rate was a load factor derivative of the firm rate, and not a rate separately designed based on the costs allocated to interruptible service. Here, in contrast, a primary purpose of peak/off-peak rates is to lower the share of the pipeline's costs that are paid by long term shippers as a result of short-term shippers obtaining peak service at less than the market rate for that service. In these circumstances, a credit to long-term customers only is appropriate.

Amoco and Dynegy ask the Commission to clarify that pipelines will not share revenues under this requirement with affiliates, negotiated rate customers, or customers receiving a discount. At present, the Commission is not persuaded that affiliates that are long-term customers should be treated any differently from other long-term firm customers for purposes of revenue crediting. However, the parties may address this issue in the individual proceedings. Also, as an initial matter, the Commission believes that it may be appropriate for customers receiving a discount to share in any revenues to the extent that the credit would reduce their rate below the discount level. However, this issue may also be addressed in the individual proceedings. On the other hand, negotiated rate shippers have already negotiated the rate they will pay, and therefore will not share in the revenues.

Koch asks the Commission to clarify that in a situation where the pipeline offers both seasonal and non-seasonal rates, and the revenues generated from the seasonal services are greater than the costs allocated to those services, but the total revenues from both seasonal and non-seasonal services are less than the costs allocated to both the services, the pipeline should not be required to share a portion of the excess revenues from its seasonal services with its long-term shippers. Koch states that in this example the pipeline has not earned its revenue requirement, and if revenue sharing were required, the pipeline would be in a worse position than if it had not offered the seasonal service. Koch asks the Commission to clarify that the revenue sharing mechanism applies only when the revenues collected from all of its transportation services exceed the total revenue requirement.

Order No. 637 stated that the pipeline is not required to share revenues if there are none, and that a pipeline will not be required to share excess revenues if it demonstrates that its total revenues from peak/off-peak rates were less than the costs allocated to the relevant services in its last rate case.[95] The appropriate method for determining the level of revenues to be credited can be decided in the individual proceedings.

c. Cost and Revenue Study. A pipeline that implements peak/off-peak rates through a limited section 4 proceeding after 12 months of experience with peak/off-peak rates, will need to prepare a cost and revenue study and file the study pursuant to the format prescribed in § 154.313 of the Commission's regulations within 15 months of implementing peak/off-peak rates. Based on the results of the study, the Commission will determine whether any rate adjustments are necessary to the long-term rates and, if so, order adjustments prospectively.

Process Gas Consumers agree that the cost and revenue study is a necessary part of the implementation of seasonal rates, but ask the Commission to clarify that interested parties may participate in the review process involving the study, and that the parties must have access to the information used by the pipeline to compile its study, and be privy to data requested by Staff in its review of the study. In addition, Process Gas Consumers request the Commission to clarify that pipelines must eliminate the discount adjustment as part of their individual cost/revenue study.

The Commission clarifies that interested parties may participate in the review process of the cost and revenue study. Procedures can be adopted in the individual cases to provide that these parties have access to the information necessary for their participation. A pipeline is not required to eliminate its discount adjustment at the time it files the cost and revenue study, but the issue of whether a change should be

[92] Indicated Shippers cite Transcontinental Gas Pipeline Corp., 78 FERC ¶ 61,057 (1997); Transcontinental Gas Pipeline Corp., 79 FERC ¶ 61,325 (1997).

[93] Transcontinental Gas Pipe Line Corp., 78 FERC at 61,209.

[94] Indicated Shippers cite Transcontinental Gas Pipeline Co., 78 FERC at 61,209.

[95] Order No. 637 at 106.

made in the pipeline's discount adjustment may be considered in the individual proceedings.

INGAA, CNG, Coastal Companies, Columbia, Enron, Koch, Kinder Morgan, and TWC argue that the cost revenue study would be overly burdensome to the pipelines and should either be eliminated or strictly limited to costs and revenues associated with peak/off-peak rates. These petitioners assert that the requirement for this study could discourage pipelines from filing for peak/off-peak rates. If the study is retained, the pipelines argue that the Commission should not require a full cost and revenue study, but should limit its scope to a review of the revenues associated with the new services compared to revenues from standard rates, as well as data regarding revenue crediting. They assert that the filing should not be an occasion to examine the pipeline's costs or long-term rates that are unaffected by the peak/off-peak initiative.

The Commission does not intend to discourage pipelines from using peak/off-peak rates, and has structured the implementation process so that pipelines are not required to file a full section 4 proceeding in order to implement peak/off-peak rates. If the pipeline uses the limited section 4 procedure, it will be necessary to assure that the pipeline does not overrecover its cost of service. In order to make this determination, the Commission will look at all the services offered by the pipeline, including the interplay of short-term and long-term services, and therefore a cost and revenue study as provided by section 154.313 of the Commission's regulations is appropriate.

Coastal Companies state that if the Commission continues to require a cost and revenue study, it should not require that it be filed within 15 months if the pipeline files a rate case in that period and seeks in the rate case to implement peak/off-peak rate. The Commission clarifies that the requirement to file a cost and revenue study applies if the pipeline chooses to implement peak/off peak rates through the pro forma filing procedures outlined in Order No. 637, not if the pipeline implements peak/off-peak rates in a general section 4 rate proceeding.

Koch states that requiring the filing of the cost and revenue study after 15 months would not be effective given what the Commission is trying to determine, and that it would be more appropriate for this study to be made after two winters as the Commission required with regard to the capacity release proposal. In addition, Koch states that pipelines should be able to offset over-recoveries received in one year against under-recoveries in another year. The Commission has determined that requiring the study after one year of experience strikes the appropriate balance between the need to obtain useful representative information and acting expeditiously.

3. Peak/Off-Peak Rates for Multi-Year Seasonal Contracts

AGA, Keyspan, NAGC, and New England urge the Commission to rule on rehearing that pipelines cannot implement value-based seasonal rates for multi-year seasonal services purchased by customers without meaningful alternatives. These petitioners assert that the Commission's finding that multi-year seasonal contracts are more like short-term contracts is unsupported with regard to essential multi-year services purchased by captive customers. These petitioners argue, as they do with regard to the applicability of the right of first refusal (ROFR) to these contracts, that the services provided under many of these seasonal contracts, often storage and related transportation, are available from the pipeline only for specific months,[96] and are not offered for a full year. They assert that these long-term contracts for seasonal service are not the product of negotiations in which the LDCs used leverage to avoid purchasing services on an annual basis. Instead, they assert, the pipelines offered the services for limited periods of the year, and the LDCs are dependent on these contracts to meet their peak demands.

These petitioners argue that since one of the benefits of seasonal rates cited by the Commission is that they will reduce costs to captive customers, the Commission should not let them be a vehicle to shift costs to captive customers. These petitioners assert that the rates for their seasonal long-term contracts were established in section 4 proceedings and already recover the full cost of providing the service. Keyspan argues that it would be unlawful to change these rates in a limited section 4 proceeding.

As also discussed below with regard to the ROFR, some multi-year seasonal contracts of captive LDC's have characteristics that are more similar to long-term service than to short-term contracts. These captive customers contract with the pipelines for the peaking service necessary for the LDCs to serve their customers during the winter heating season over a period of years. These services, often storage and related transportation, are offered by the pipeline only on a partial year basis, and the LDCs take the services on the basis that they are offered by the pipeline. In these circumstances, the shippers are different from non-captive shippers taking short-term service at peak periods with no long-term contractual relationship with the pipeline. It was not the Commission's intent that the limited section 4 filings would result in increased costs to long-term captive customers, and the mechanisms for implementing peak rates on the individual pipelines must be consistent with the Commission's goals. Issues concerning the appropriate allocation of costs to long-term peak/off-peak are more appropriately addressed in a general section 4 rate case.

4. Other Matters

a. Resolution by Settlement. INGAA and Kinder Morgan ask the Commission to clarify that peak/off peak and term-differentiated rates may be implemented through settlements, and that nothing in Order No. 637 affects the ability of pipelines and their customers to negotiate peak/off-peak and term differentiated rates that do not interfere with existing settlement provisions. Kinder Morgan asks the Commission to clarify that peak/off-peak and term-differentiated rates may be implemented through settlements that can deviate from the conditions set forth in Order No. 637. The Commission clarifies that its discussion of peak/off-peak rates and term-differentiated rates does not limit the parties' ability to settle rate cases.

b. Future Discounts. Koch asks the Commission to clarify whether offering peak/off-peak rates will affect its ability to seek a discount adjustment in its next rate case. Koch states that it does not appear that peak/off-peak rates would have a positive effect on revenues or reduce the annual level of discounting on its system. If Koch decides not to implement seasonal rates and that choice will reduce its ability to use a discount adjustment in future rates cases, then Koch needs to factor that risk into its decision, since the discount adjustment is critically important to Koch's long-term financial viability. Koch is concerned that the election not to implement seasonal rates will bar it from seeking a discount adjustment in future rate cases.

The Commission clarifies that implementation of peak/off-peak rates is voluntary on the part of the pipeline. A pipeline's decision not to implement peak/off-peak rates will not affect the

[96] AGA gives several examples of such service, *e.g.,* Transco's Southern Expansion Service which is available only from November through March.

pipeline's ability to seek a discount adjustment in its next rate case.

C. Term Differentiated Rates

Term-differentiated rates, *i.e.*, rates that differentiate among shippers based on the length of their contract, should be available to the pipeline as one of several methods that could be used to price capacity more efficiently. In Order No. 637, the Commission explained that term-differentiated rates would match price more closely with risk-adjusted value, and could result in a rate structure that prices capacity held for a longer term at a lower rate than capacity held for a shorter term.[97] As explained in Order No. 637, term-differentiated rates would more accurately reflect in the price of service the relative levels of risk that pipelines must face when selling service for a shorter period than for a longer period, as well as the higher risks that customers face when they purchase service for a longer period of time.

The Commission in Order No. 637 also explained that like peak/off-peak rates, term-differentiated rates would be cost-based, just and reasonable rates because the Commission will limit the rates in the aggregate to produce the pipeline's annual revenue requirement. The Commission recognized that there are various methods that could be used to develop reasonable term differentiated rates, and some methods might be more appropriate on certain pipelines than on others. Therefore, the Commission did not adopt a generic formula for implementation of term-differentiated rates, but indicated that it would allow the pipelines and the customers to work out the details of the methodologies in specific rate proceedings.

Order No. 637 also provides that a pipeline may propose term-differentiated rates just for long-term services or for both short and long-term services. Because the use of term-differentiated rates for short-term services may enhance the potential for price discrimination, particularly during off-peak periods, by increasing the rate caps that would apply to short-term service acquired in off-peak periods, the Commission made clear that a pipeline proposing term-differentiated rates for short-term services will need to explain fully the basis and justification for the price differentials. Further, because term-differentiated rates have a much greater potential for affecting the rates of all customers than peak/off-peak rates,[98] the Commission required that the general reallocation of revenue responsibility among customer classes must be done through rate changes for all customers simultaneously in the section 4 rate filing in which the pipeline seeks to implement term-differentiated rates. Requests for rehearing or clarification of this portion of Order No. 637 were filed by Amoco, Keyspan, Process Gas Consumers, INGAA, CNG, Coastal Companies, Kinder Morgan and Koch. The requests for rehearing are discussed below.

Process Gas Consumers argue that the Commission violated its own rules and acted arbitrarily and capriciously in granting pipelines permission to file for term-differentiated rates without undertaking further generic review and definition of the proper principles to guide the filings. Process Gas Consumers state that the Commission's regulations preclude pipelines from differentiating among shippers based upon contract term. Process Gas Consumers quote 18 CFR 284.7(b)(1) and 284.9(b) which provide that pipelines offering Part 284 firm and interruptible service must ''provide such service without undue discrimination, or preference in the quality of service provided, *the duration of the service*, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.'' (emphasis added by Process Gas Consumers). Process Gas Consumers argue that term-differentiated rates would differentiate among shippers taking the same service based upon their duration of service, and that this is prohibited by the regulations. Further, Process Gas Consumers argue that under the current regulations the Commission has not permitted such a rate design change[99] and has failed to explain its reasons for departing from the regulations.

The portions of the regulations quoted by Process Gas Consumers do not prohibit charging a different rate for contracts of differing lengths. Instead, they provide that a pipeline cannot engage in undue discrimination in certain areas, including duration of service. Thus, if the capacity is available, and the shipper requests service at the maximum rate, then the pipeline must provide the service without regard to the length of the service requested. Moreover, charging a different rate for long-term service than for short-term service does not constitute undue discrimination because the different characteristics of long-term and short-term service justify rate differentials. As explained in Order No. 637, a shorter term contract is riskier for the pipeline, and a higher rate would compensate the pipeline for this additional risk. A shorter term contract provides greater flexibility and less risk to the shipper, and a higher rate would recognize and require payment for these benefits.

Process Gas Consumers argue that the Commission should reverse its decision and initiate further generic proceedings to provide guidance as to the proper boundaries for term-differentiated rates. Process Gas Consumers argue that the Commission's decision to shift the evolution of term-differentiated rates to individual pipeline cases does not constitute reasoned decisionmaking or a fair procedural setting for this evolution. Process Gas Consumers argue that while the Commission can set policy in individual cases, it may not encourage a departure from its current regulations without guidance or further regulatory action. Industrial argue that the Commission's decision to proceed in this fashion fails to protect consumers from the unjust and unreasonable rates and discriminatory behavior that Order No. 637's encouragement of term-differentiated rates invites.

As explained above, the Commission does not accept the premise of Process Gas Consumers' argument, *i.e.*, that term differentiated rates are unjust, unreasonable, and discriminatory. Moreover, as Process Gas Consumers recognize, the Commission can develop policy in adjudications as well as in rulemakings. As the Commission explained, there are a number of methods that could be used to develop reasonable term-differentiated rates, and some methods might be more appropriate on certain pipelines than on others. In these circumstances, it is preferable to allow the pipelines and the customers to work out the details of the methodologies in specific rate proceedings, rather than to try to discuss and analyze all of the possibilities in a generic proceeding. However, this does not mean that there are no parameters or standards that a proposal must meet, or that individual adjudications will not protect consumers from unjust and unreasonable rates and discriminatory behavior. All methods for developing term-differentiated rates must meet the NGA requirements that rates must be just and reasonable and not unduly discriminatory. These standards can more easily be applied to specific

[97] Order No. 637 at 107.

[98] Term-differentiated rates would raise the maximum tariff rates for some customers, and there should be a decrease in the maximum tariff rates for long-term customers.

[99] Process Gas Consumers cites ANR Pipeline Co., 82 FERC ¶ 61,145 at 61,535 (1998).

pipeline proposals in a section 4 proceeding than to theoretical generic principles.

Further, Process Gas Consumers argue, without guidance in a generic proceeding, the Commission risks substantial harm to the development of dynamic markets that depend on short-term transactions. Process Gas Consumers provides a list of types of proposals that should be prohibited by the Commission, *e.g.,* proposals that would allow pipelines to exercise market power over short-term market participants, proposals for ''outrageously high'' one-day rates. However, the Commission will assure in the individual section 4 proceedings that the specific proposal will not have adverse market consequences and that the rates proposed are not unreasonable. Process Gas Consumers have provided no reason why shippers cannot be protected and just and reasonable rates developed in individual section 4 proceedings.

INGAA, CNG, Coastal Companies, Kinder Morgan, and Koch argue that the Commission should not require pipelines to file a general section 4 rate case to implement term-differentiated rates. They argue that the procedures established by the Commission for implementing peak/off-peak rates are also appropriate here. They argue that the requirement of a full section 4 proceeding will make term-differentiated rates less attractive to pipelines and the option may go unused.

The Commission has attempted to balance the desire for expeditious implementation of the voluntary rate options with the need to assure that the statutory standards are met. While the Commission has concluded that a limited section 4 proceeding can accommodate both considerations in the implementation of peak/off-peak rates, the Commission has concluded for the reasons set forth in Order No. 637, that term-differentiated rates must be proposed in a section 4 proceeding. This does not necessarily mean that the proceeding must be lengthy and time-consuming or involve a full evidentiary hearing, and the parties may use that forum to develop a mutually agreeable method of implementing term-differentiated rates. Properly designing term-differentiated rates could be very complicated and would affect all the pipeline's rates to ensure that rates stay within the pipeline's revenue requirement. This cannot be done in a limited section 4 proceeding. The Commission does not intend to discourage pipelines from proposing term-differentiated rates, but has determined that a section 4 proceeding is necessary.

Amoco argues that the Commission erred in failing to limit a pipeline's rate flexibility options to either seasonal rates or term-differentiated rates, but not both in the short-term market. Amoco argues that pipelines should not be permitted to superimpose term-differentiated rates on seasonal rates, such that the maximum short-term rate would exceed the expected seasonal market value, else the result would be to effectuate market-based rates without a showing of a lack of market power. Amoco argues that this would eliminate the primary market mitigation mechanism relied on by the Commission in permitting market-based capacity release rates, *i.e.,* that just and reasonable cost-based pipeline rates will serve as a good alternative to unregulated capacity release rates.

Further, Amoco argues that term-differentiated rates are intended to adjust rates on the basis of demonstrable term risk, and this rationale does not apply in the short-term market where implementation of seasonal rates will allow pipelines to structure their rates to capture seasonal value differences within a cost of service framework. Amoco argues that there should be an absolute prohibition against term-differentiated rates for short-term contracts.

As the Commission acknowledged in Order No. 637, the use of term-differentiated rates for short-term services may enhance the potential for price discrimination, particularly during off-peak periods, by increasing the rate caps that would apply to short-term service acquired in off-peak periods. The Commission made clear that these proposals will be carefully scrutinized, and a pipeline proposing term-differentiated rates for short-term services will need to explain fully the basis and justification for the price differentials. If the pipeline chooses to implement both peak rates and term-differentiated rates, the proposal will be implemented in a full section 4 proceeding and the Commission and the parties will be able to address the impacts of the proposal. The Commission will not preclude a pipelines from proposing both rate methodologies.

Amoco also states that the Commission should clarify that term-differentiated rates should be designed only within rate of return ''zone of reasonableness'' parameters to reflect the differential risk associated with varying contract durations. For example, Amoco states that if a ROE zone of reasonableness ranges from 10% to 14%, a longer term contract of 10 years or longer would have a 10% ROE imputed and a short term contract of one year would have a 14% ROE imputed. Otherwise, Amoco argues, pipelines can use their market power to coerce captive customers into purchasing capacity either at excessive rates or for excessive terms. Amoco's suggestion may be one reasonable method of designing term-differentiated rates which can be considered in the individual proceedings, but the Commission will not limit the parties to this one method. Pipelines and their customers may devise other methods that protect shippers from unreasonable rates or contract terms.

Amoco is also concerned about affiliate abuse which it says is increased in the term-differentiated rate structure. Amoco states that there must be limitations on the imputed contract term available for an affiliate. The Commission will not establish a limit on the contract term available for affiliates, but this is an issue that the parties may address in a section 4 proceeding.

Keyspan asks the Commission to clarify that pipelines that are subject to Commission-approved settlements that prohibit increases to rates for seasonal services for some period are not entitled to increase those seasonal rates until the specified period in the settlement expires, and that pipelines cannot implement term-differentiated rates during rate moratorium period. INGAA asks the Commission to clarify that nothing in Order No. 637 affects the ability of pipelines and their customers to negotiate term-differentiated rates that do not interfere with existing settlements. The Commission cannot rule on specific settlement provisions, but the Commission clarifies that parties continue to be bound by their settlements, and nothing in Order No. 637 changes existing settlements. Further, nothing in this rule limits the parties' ability to negotiate future settlements.

Keyspan also asks the Commission to clarify that any term-differentiated rates proposed by the pipelines must differentiate on the basis of the contract term regardless of the remaining life of the contract, *i.e.*, if a pipeline has different rates for contracts of ten, five, and three years, a customer with three years remaining on a ten-year contract should be charged the ten-year rate for the remaining three years. The Commission clarifies that its intent was to have a long-term rate apply to a long-term contract for the duration of that contract, and not to have that contract charged a shorter-term rate in the later years of the contract.

D. Voluntary Auctions

Recognizing the increasing use of electronic commerce to create efficient markets, the Commission in Order No. 637 encouraged both pipelines and third parties to develop capacity auctions, and provided basic principles for the design of transparent, verifiable, and non-discriminatory auctions. The Commission also indicated that an appropriately designed auction may be a means by which a pipeline could sell all or some of its capacity without a price cap so long as the auction was designed in such a way as to protect against the pipeline's ability to withhold capacity and exercise market power. The Commission set out some general criteria for accomplishing these goals, one of which was a statement that all capacity available at the time of the auction would have to be included in the auction.

Koch requests clarification that a pipeline can engage in limited auctions without a price ceiling by auctioning only capacity between select points in the auctions. Koch claims that such an auction would prevent the exercise of market power because the pipeline would be unable to withhold any capacity between the designated points.

While the Commission would have to examine any such auction proposal in detail before it could determine whether it would adequately protect against the exercise of market power, Koch's proposal for selective auctions does not appear sufficient. Under Koch's proposal, the pipeline could select only capacity between certain points to include in the auction at a particular time, while reserving the right to sell capacity between those points outside the auction process at other times as well as to sell capacity between other points outside of the auction process. In a fair auction process, the pipeline should not be able to choose the auction format only for those markets or at those times where it could benefit, while reserving its right to selectively discount at other times or for other markets.

Process Gas Consumers contends the Commission should not permit market-based rates through auctions, or at least should provide detailed guidance in advance about the showing the seller of capacity must make to justify the lifting of price caps. They further seek clarification concerning the process to be used by a pipeline to propose an auction, particularly about the rights of shippers to participate in that process, clarification that auctions can only take place upon reasonable notice and during normal business hours, and clarification that combined gas and capacity auctions by third parties would be subject to Commission regulation.

Auctions can be methods by which pipelines can sell capacity without a rate ceiling if the auction format adequately protects against the exercise of market power by preventing withholding of available capacity and price discrimination. There may be many different ways of achieving this result, and the Commission cannot specify in advance all the necessary criteria. Given the Commission's and the industry's lack of experience with auctions, it is important to encourage innovation in auction design, rather than having the Commission insist on a design that may not be the most effective or efficient. One of the Commission's principles for a fair auction design is that such an auction must be open to all potential bidders on a non-discriminatory basis, which would include notice of when the auctions will take place. But the Commission will not generically require that all auctions take place during normal business hours, as requested by Process Gas Consumers. Given the intra-day nomination schedule adopted by the Commission, some auction designs may want to include after hour auctions. Questions concerning the timing of auctions must be evaluated in individual applications.

Pipelines contemplating proposing auctions would be well advised to review their plans with their customers as a way of resolving potential problems and creating a more efficient design prior to filing the proposal with the Commission. Shippers, of course will have to the right to fully participate in any auction proceeding initiated by a pipeline filing.

The Commission has authority to regulate the reallocation by shippers of transportation capacity.[100] Depending on how an auction is organized, and whether waiver of Commission regulatory requirements is requested, Commission regulatory oversight may or may not be necessary. Third-parties currently can auction released capacity without regulatory oversight by the Commission as long as the results of those auctions comply with the Commission's capacity release regulations, particularly the requirement for posting and bidding on Internet sites authorized by pipelines. In these cases, the third-party auctions are merely ways for shippers to enter into pre-arranged releases of capacity.[101] As long as those pre-arranged releases comply with Commission requirements, i.e., are transmitted to the pipeline for posting on pipeline Internet sites and bidding (when necessary) is allowed, no further oversight is needed.[102]

Some third parties indicated in their comments that compliance with some of the Commission's existing regulations can impede the development of third-party auctions. For instance, the requirement that certain transactions must be posted on pipeline Internet sites was identified as a barrier to third-party auctions because it would require a double posting of capacity (once in the auction and once on the pipeline's Internet site) and would render the results of the auction less certain. In those cases in which a shipper or third-party finds that a current Commission regulatory requirement impedes the development of an efficient auction, the Commission encourages shippers or third-parties to propose an alternate method for satisfying the goal of the requirement. For example, to satisfy the requirement that prices be disclosed on a pipeline's Internet web site, the pipeline could be required to maintain a link on its web site to the web site of the third-party auctioneer. The Commission cannot proscribe, in the abstract, criteria for such proposals. Third-parties should have the freedom to develop and propose innovative solutions to such problems.

II. Improvements to Competition Across the Pipeline Grid

A. Scheduling Equality

In Order No. 637, the Commission adopted the proposal set forth in the NOPR to amend the Commission's regulations to include a new section 284.12(c)(1)(ii) to require pipelines to provide purchasers of released capacity the same ability to submit a nomination at the first available opportunity after consummation of the deal as shippers purchasing capacity from the pipeline. This will enable shippers to acquire released capacity at any of the nomination or intra-day nomination times, and nominate gas coincident with their acquisition of capacity. By enabling released capacity to compete on a comparable basis with pipeline capacity, the new section of the

[100] *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1151–54 (D.C. Cir. 1996).

[101] Pipelines can, and have, used third-parties to satisfy the posting and bidding obligations for their systems. Third-parties, in this context, refer to parties conducting auctions not under the auspices of the pipeline.

[102] For example, third-party auctions for short-term released capacity (31 days or less) can be conducted without complying with the requirements for posting and bidding on pipeline Internet sites, because short-term releases are exempt from the Commission's posting and bidding requirements.

regulations will foster a more competitive short-term market. Also, in Order No. 637, the Commission explained the basis for its policy that the shipper must have title to the gas being transported, and concluded that no changes in this policy are appropriate at this time. Niagara Mohawk, NGSA, Scana Energy Marketing, Tejas, TWC, and Williston seek clarification or rehearing of this portion of Order No. 637.

Williston seeks rehearing of the Commission's regulation requiring nominations for capacity release transactions to be on an equal footing with shippers purchasing capacity directly from the pipeline. Williston argues that there must be differences in the nomination and scheduling of capacity release and the nomination and scheduling of pipeline capacity because additional time is required to evaluate capacity release transactions due to possible conditions the releasing shipper may impose on the acquiring shipper. Williston states that the time required by the pipeline to evaluate such conditions and the potential operational impact requires that the existing timing difference in the nomination and scheduling process.

Williston does not explain what conditions and operational considerations could need to be evaluated. The replacement shipper will take the service under the same contract, subject to the same conditions as the releasing shipper and, therefore, will have the same operational impact on the system. There should be no change in conditions or impact for the pipeline to evaluate.

In addition, Williston asserts that the provision of such a service will not be cost effective on its system because Williston would be required to expend significant money and manhours on new electronic contracting software. Williston states that it has had 13 capacity releases in the last three years, and this number of releases does not justify the Commission's imposition of this requirement on Williston. Williston argues that the offering of nomination opportunities for capacity release equal to nomination opportunities for shippers purchasing capacity should be on a best efforts or optional basis on pipelines with significant capacity release.

As explained in Order No. 637, the Commission adopted the new regulation requiring equality in scheduling in order to enable released capacity to compete on a comparable basis with pipeline capacity. This furthers the Commission's goal of enhancing competition and improving efficiency across the grid. In order for the requirement to have this effect it must apply to all pipelines and all capacity release transactions.

Scana seeks clarification, or in the alternative, rehearing, that the pipelines must provide replacement shippers with the same no-notice scheduling rights as held by releasing shippers. Scana asserts that some pipelines have placed restrictions in their tariffs on the release of no-notice transportation, such that a shipper may release no-notice transportation, but the replacement shipper receives FT capacity without no-notice scheduling rights. Scana further asserts that other pipelines do not restrict release of no-notice service, but instead impose artificial restrictions on the scheduling flexibility after release. Scana argues that, consistent with the Commission's purpose of achieving scheduling equality between releasing and replacement shippers, the Commission must clarify that Order No. 637's mandate for scheduling equality among releasing and replacement shippers is intended to cover no-notice scheduling rights and contingency ranking.

The Commission has held that the pipeline must permit shippers to release their no-notice service as no-notice service.[103] Further, if the pipeline permits shippers to receive no-notice service at flexible delivery points, it must permit the no-notice shipper to release that capacity with similar flexible delivery points.[104] However, if the pipeline does not permit its no-notice shippers flexible delivery point rights, it is not required to provide flexible delivery points to the replacement shipper. There should be no operational reason why the pipeline should limit the release of no-notice service or place restrictions on the released service that do not apply to the releasing shipper. Since the shipper releasing the no-notice capacity is not able to use it, the pipeline will not be providing any more no-notice service than it contracted to provide.

TWC and Tejas ask the Commission to clarify the relationship between new section 284.12(c)(1)(ii) and the approved GISB Standards, including the GISB Standard timelines for capacity release as set forth in GISB Standard 5.3.2. The Commission clarifies that new section 284.12(c)(1)(ii) supplants GISB Standard 5.3.2, to the extent that they are inconsistent. Thus, the capacity release nomination requirements are contained in the new regulation, and GISB Standard 5.3.2 now applies only to the bidding process. It is not necessary for the Commission to delay implementation of its new nomination requirements until GISB acts to amend section 5.3.2.

Tejas quotes the discussion in Order No. 637 as providing that under new regulation § 284.12(c)(1)(ii), the pipeline must ''approve'' a contract within an hour. Tejas asks the Commission to clarify whether the Commission means ''issuance'' or ''approval,'' and whether issuance or approval of the contract means that it has been executed by both parties.

The text of the regulation states that the pipeline must ''issue'' the contract within an hour and the Commission clarifies that the requirement is to issue the contract, rather than approve the contract. Issuance of the contract does not mean that it has been executed by both parties.

Tejas also observes that GISB Standard 5.3.2 defines short-term releases as those with a duration of less than 5 months, and in Order No. 637, the Commission defines short-term releases as those extending for less than one year. Tejas asks the Commission to clarify which of the two definitions will apply to short-term releases.

The bidding requirements of GISB Standard 5.3.2 apply to capacity releases of more than five months. In Order No. 637, the Commission waived, for a two year period, the rate ceiling for capacity releases of less than one year. Neither of these provisions defines a short-term release for other purposes, and they are not inconsistent.

NGSA states that although the Commission established scheduling equality between capacity release shippers and others holding firm capacity, and recognized the efficacy of master agreements in achieving scheduling equality, it did not require use of a master agreement. NGSA asserts that master agreements are the only means to achieve scheduling equality, and therefore the Commission should require them.

The Commission recognizes that master agreements are a good way to achieve scheduling equality, but as explained in Order No. 637, there are other methods as well. The Commission will not mandate any one method, but will leave this to be resolved by the pipelines and shippers.

Finally, Niagara Mohawk requests that the Commission clarify that it will be receptive to requests for waiver of the shipper must have title policy where the applicant demonstrates that the waiver

[103] Order No. 636–B, 61 FERC ¶ 61,272 at 62,009–10 (1992); Questar Pipeline Co., 62 FERC ¶ 61,192 at 62,298 (1993).

[104] **Editor's Note:** No text in footnote 104.

will not result in undue discrimination or the inefficient allocation of capacity. Parties may apply for a waiver of the policy and, as in the past, the Commission will consider the waiver based on the specific circumstances of the request.[105]

B. Segmentation and Flexible Point Rights

In Order No. 636, the Commission established two related policies—flexible point rights and segmentation—that were designed to provide firm shippers with the flexibility to use their capacity and to enhance competition between shippers and between shippers and the pipeline.[106] Flexible point rights refer to the rights of firm shippers to change receipt or delivery points so they can receive and deliver gas to any point within the firm capacity rights for which they pay. Segmentation refers to the ability of firm capacity holders to subdivide their capacity into segments and to use the segments for different capacity transactions.

The requirement to permit segmentation originally was not included in the Commission's regulations, but was implemented through pipeline restructuring filings. The Commission found that capacity segmentation was not being implemented uniformly across the pipeline grid. Some pipelines did not permit segmentation at all, others placed restrictions on the ability to segment for release, and others did not permit shippers to segment capacity for their own use.

In Order No. 637, the Commission responded to the inconsistent application of segmentation rights by adopting a regulation requiring pipelines to permit a shipper ''to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible.'' [107] Each pipeline is required to make a *pro forma* tariff filing demonstrating how it intends to comply with the regulation, by revising its tariff, explaining why its existing tariff meets the requirements, or explaining why the operational configuration of its system does not permit segmentation.

In Order No. 637, the Commission also concluded that no regulatory changes were needed to be made with respect to the relative scheduling priorities of shippers using secondary points depending on whether they were shipping within or outside their capacity path.[108]

Rehearing and clarification requests were filed with respect to both the segmentation and path priority determinations.

1. Segmentation

Rehearing and clarification requests were received regarding the adoption of the segmentation regulation and the requirements of the regulation. In addition, rehearing and clarification requests were filed concerning the extent to which earlier Commission policies will apply to segmented releases and the manner in which pipelines are to implement the requirement. These are discussed below.

a. Adoption and Requirements of the Regulation. Legal Justification. Koch maintains the Commission's generic segmentation policy violates sections 4 and 5 of the NGA. It contends the requirement violates section 5, because the Commission has not found that an existing tariff provision is unlawful and that the Commission-imposed modification of the tariff is just and reasonable. Koch maintains the Commission's action in requiring a pipeline compliance filing is not justifiable under section 4 of the NGA, because Koch has not voluntarily submitted a proposed tariff change and the Commission cannot under section 4 place the burden on the pipeline of justifying that segmentation is inappropriate.

The Commission's action is an appropriate use of its authority under section 5 of the NGA. In Order No. 637, the Commission made a generic determination that the failure of a pipeline to permit segmentation would be unjust and unreasonable if the pipeline could operationally permit segmentation.[109] Under Order No. 636, the firm transportation capacity held by shippers was to include the same flexibility the pipeline enjoyed when it provided bundled sales service, and the ability to use capacity flexibly, through the use of flexible point rights and segmentation, was part of the flexibility enjoyed by pipelines. Further, as the Commission found in Order No. 637, segmentation increases the number of capacity alternatives and so improves competition, and also is important in facilitating the development of market centers and liquid gas trading points.[110] Based on these findings, the Commission determined that pipelines that operationally can permit segmentation, but do not, would be acting in an unjust and unreasonable manner.

While Order No. 637 announced the Commission's segmentation policy, it did not make a section 5 determination that any particular pipeline's tariff is, in fact, unjust and unreasonable. Any such determination will be made in the individual pipeline compliance proceedings. The Commission had reason to believe, based on the comments and its own analysis of pipeline tariffs, that some pipelines are not permitting shippers to segment capacity, both for the shipper's own use and for capacity release transactions, to the extent operationally feasible on their systems. The Commission, therefore, required pipelines to make *pro forma* filings to establish whether their current tariffs are just and reasonable. The requirement for pipelines to make *pro forma* compliance filings is not, as Koch characterizes it, a requirement that pipelines make a section 4 filing. Rather, the *pro forma* filings require the pipelines to show why their existing tariffs should not be considered unjust and unreasonable. If the Commission finds changes are warranted, it will be acting under section 5 to implement such changes.

Non-Operational Barriers to Segmentation. CNG and Columbia Gas contend the inquiry into segmentation should not be limited to whether segmentation is ''operationally feasible,'' because non-operational problems, such as rate design, administrative complexity, or potential legal barriers can inhibit the ability of a pipeline to offer segmentation. They maintain that such problems can be particularly difficult for reticulated pipelines where shipper paths are not easily defined. CNG contends that such changes can be made only through a full section 4 rate filing that would include the identification of multiple paths, a redesign of services, and an elimination

[105] *See, e.g.,* Baltimore Gas and Electric Co., 88 FERC ¶ 61,133, *reh'g denied,* 89 FERC ¶ 61,150 (1999).

[106] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,428, 30,420–21 (Apr. 8, 1992), Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,559 n.151 (Aug. 3, 1992), Order No. 636–B, 61 FERC ¶ 61,272, at 61,997 (1992).

[107] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304; 18 CFR 284.7(e).

[108] Order No. 637, 65 FR at 10196, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304.

[109] *Wisconsin Gas Co.* v. *FERC,* 770 F.2d 1144, 1166–67 (D.C. Cir. 1985) (Commission can make generalized determinations that particular practices are unjust and unreasonable through rulemaking).

[110] Order No. 637, 65 FR at 10195, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,303–304.

of postage stamp (one rate for the entire system) rate structures.

The Commission will not eliminate the ''operationally feasible'' requirement from the regulation. The goal in permitting shippers to segment capacity is to enable firm shippers to use the capacity for which they have contracted as flexibly as possible without infringing on the legitimate rights of other shippers. In the case of a reticulated pipeline charging a postage stamp rate, firm shippers are paying for the use of the entire pipeline in their rates. The pipeline, therefore, has the obligation to optimize the system so that firm shippers can make the most effective use of the capacity for which they pay. On reticulated pipelines with postage stamp rate structures, where shippers have no specifically defined paths, the pipeline should permit firm shippers to use all points on the system and to use or release segments of capacity between any two points, while continuing to use other segments of capacity.

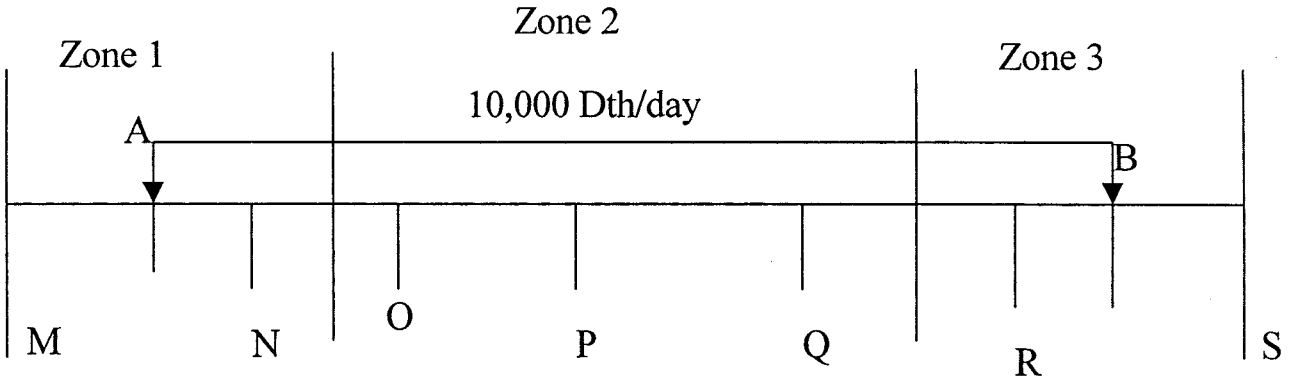
The Commission recognizes that permitting segmentation on a reticulated pipeline can result in operational difficulties if replacement shippers flow gas at different points than the existing shippers. But that is not a reason for the pipeline to refuse to provide the ability to segment. Instead, the pipeline needs to optimize its system to provide maximum segmentation rights while devising appropriate mechanisms to ensure operational stability. Displacement pipelines with postage stamp rate structures have been able to permit segmentation with operational rules to protect system integrity.[111]

On reticulated systems with zone rates, segmentation can be limited to the zones for which the shipper pays. If a pipeline currently using a postage stamp rate structure finds that providing segmentation or defining capacity paths would be more feasible with a redesign of its rates, the pipeline can make a section 4 filing to establish rates that it considers more consonant with segmentation.

b. Compliance Filings and Implementation. Overlapping capacity segments. Coastal, INGAA, Kinder Morgan, and Williston request clarification that the Commission will adhere to its current policy of not permitting shippers to use segmentation to release overlapping capacity segments.[112] National Fuel Distribution also seeks clarification that shippers can segment capacity at market centers or other non-physical transaction points on the pipeline's system.

Capacity segmentation refers to the ability of shippers to divide their capacity into individual segments with each segment equal to the contract demand of the original contract. As a general matter, pipelines are not required to permit segmentation in a situation where the nominations by a shipper or a combination of releasing and replacement shippers exceed the contract demand of the underlying contract on any segment. The Commission further clarifies, as National Fuel Distribution requests, that shippers can divide their capacity through segmented releases at any transaction points on the pipeline system, including virtual transaction points, such as paper pooling points, as well as at physical interconnect points, such as market centers.

To help avoid inconsistent application of the Commission's flexible receipt and delivery point policy and the segmentation policy, the following example will provide clarification as to how those policies should operate. In this example, a shipper has a contract for 10,000 Dth per day from receipt point at A to delivery point B.



The shipper has the flexibility to segment capacity throughout zones 1–3 (point M through point S), so long as the combined nominations of it and replacement shippers do not exceed the mainline contract demand of 10,000 Dth. The shipper has the right to segment outside of its path because it is paying the full rates for zones 1–3 and, therefore, has the right to use all points within the zones for which it pays. Thus, the shipper could nominate and ship 10,000 Dth from point M to point P, while at the same time nominate and ship another 10,000 Dth from point P to point S. But the shipper could not nominate 10,000 Dth from point M to point Q and nominate 10,000 Dth from point P to point S, because that would result in 20,000 Dth nominated in segment P–Q.

The shipper also could release 10,000 Dth of capacity from point P to point B, while retaining 10,000 Dth of capacity from point A to point P for its own use. The releasing shipper could then nominate and ship 10,000 Dth from point A to point P, while the replacement shipper could nominate and ship 10,000 Dth from point P to point B.

Segmentation would also permit the releasing and replacement shippers to use overlapping segments so long as their combined nominations in a segment do not exceed 10,000 Dth. For instance, the releasing shipper could nominate and ship 5,000 Dth from point A to point Q, while the replacement

[111] *See* Northwest Pipeline Corporation, 69 FERC ¶ 61,171, at 61,677 (1994), 71 FERC ¶ 61,315, at 61,224 (1995) (providing operational controls for segmented releases that jeopardize system integrity).

[112] Citing Tennessee Gas Pipeline Company, 85 FERC ¶ 61,052 (1998), *reh'g denied,* 86 FERC ¶ 61,290 (1999); Texas Gas Transmission Corporation, 89 FERC ¶ 61,096 (1999).

shipper nominates and ships 5,000 Dth from point O to point B even though the segments overlap in segment O–Q. Both nominations would be accepted because the combined nomination over segment O–Q would not exceed 10,000 Dth. However, if both shippers sought to nominate the full 10,000 Dth in one or more pipeline segments, the pipeline could limit the nominations to 10,000 Dth in those segments. The pipeline should have a default tariff provision detailing how nominations from releasing and replacement shippers will be handled in the event that they exceed the contract demand, and releasing shippers also can include provisions for handling overlapping nominations in their release conditions.[113]

Both the releasing and replacement shippers also would retain the flexibility to use their capacity fully to make backhauls. Thus, the shipper could deliver 10,000 Dth from point A to point B using forward haul capacity and 10,000 Dth from point S to point B using a backhaul, because there is no overlap over the mainline.

This may require a change by some pipelines with respect to their tariffs regarding backhauls. The Commission's policy on the use of forwardhauls and backhauls to the same point in excess of contract demand has been in the process of change. While the Commission found in 1997 that a shipper cannot use the same delivery point for a forwardhaul and backhaul in excess of contract demand,[114] the Commission recently found that a forwardhaul and backhaul to a series of 23 meter stations considered as a single point for nomination purposes did not result in a capacity overlap even though the total amount received by the shipper exceeded contract demand.[115] In order to promote shippers' ability to use their capacity as flexibly as possible, the Commission has determined that prior restrictions on shippers' use of forwardhauls and backhauls to the same point should not be followed. Shippers' segmentation rights should not depend upon metaphysical distinctions between delivery to a single point or to two points adjacent to each other. In both situations, shippers should be permitted to use a forwardhaul and a backhaul to deliver gas as long as the mainline contract demand is not exceeded and they can take delivery of the gas.

Segmentation and primary point rights. Several rehearing requests relate to the relation between segmentation and primary point rights. El Paso and Enron maintain segmentation should be considered separately from primary point rights and should not result in shippers being able to use segmentation to increase primary point rights beyond those covered in their contracts. Kinder Morgan claims that if shippers change their primary point rights in segmenting capacity for their own use, the shippers do not have the right to revert to their original primary points without the consent of the pipeline. Kinder Morgan and INGAA seek clarification that pipelines can resell capacity at primary points vacated by releasing or replacement shippers. In contrast, National Fuel Distribution maintains that shippers should be permitted to segment capacity and retain their primary priority in both segments.

The Commission cannot clarify the role of primary receipt points on a generic basis, but will need to examine the issues raised in the pipelines' compliance filings. In Order No. 637, the Commission explained that in the past it had adopted different policies on the issue of whether pipelines could restrict replacement shippers' ability to choose new primary points depending on whether pipelines had historic tariff provisions that limited primary point rights to the same level as the shipper's mainline contract demand.[116] Although the Commission accepted tariff filings during Order No. 636 that continued historic limitations on the number of primary receipt and delivery points, the Commission questioned whether it continued to be appropriate for pipelines to limit receipt and delivery point quantities to the shipper's contract demand.[117] The Commission concluded that a pipeline's overly restrictive allocation of primary point rights to existing shippers could restrict the ability of shippers to use their capacity flexibly. But the Commission did not impose a blanket prohibition on all limits to a firm shipper's ability to choose primary receipt and delivery points. The Commission recognized that pipelines might need to impose some restrictions on primary point rights, as appropriate to the circumstances of their systems, to prevent hoarding of capacity by some shippers to the detriment of others.[118] Moreover, even when the Commission did permit continuation of tariff provisions that limited primary point rights to contract demand, the Commission adopted a policy (*Texas Eastern/El Paso* policy) which permitted both releasing and replacement shippers in segmented releases to choose separate primary point rights that did not exceed each shipper's contract demand.[119]

Permitting flexibility in the selection of primary points in segmented releases can be important to creating effective competition between pipeline services and released capacity. If replacement shippers were limited to the use of segmented points on a secondary basis, as some of the rehearing requests suggest, the pipeline would still retain the right to sell that receipt point on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented release transactions. In order to equalize competition between pipeline and released capacity, pipelines need to permit shippers greater flexibility in selecting primary points than they have in the past.

Because the Commission has not reviewed receipt and delivery point restrictions since Order No. 636 and restrictions on segmentation and point rights can limit effective competition, pipelines should not be able to continue to rely upon their historic tariff practices dating back to the days of merchant service, but need to justify restrictions on shippers' ability to use additional primary points in segmented transactions and any deviation from the *Texas Eastern/El Paso* policy.[120] For example, on a fully subscribed pipeline where receipt point capacity exceeds mainline capacity fivefold, the pipeline can seemingly permit shippers to select primary receipt point rights well in excess of their mainline contract

[113] *See* Texas Gas Transmission Corporation, 89 FERC ¶ 61,096, at 61,274 (1999).

[114] Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 (1997) (shipper cannot use same delivery point for forwardhaul and backhaul in excess of contract demand).

[115] Transcontinental Gas Pipe Line Corporation, 91 FERC ¶ 61,031 (2000) (using forwardhaul and backhaul to series of delivery points does not result in an overlap).

[116] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,301–302. *Compare* Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (permitting pipelines to continue historic limitations on primary receipt point rights) with Northwest Pipeline Corporation, 63 FERC ¶ 61,124, at 61,806–08 (1993) (not permitting the pipeline to add such restrictions).

[117] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993); Transwestern Pipeline Company, 62 FERC ¶ 61,090, at 61,659, 63 FERC ¶ 61,138, at 61,911–12 (1993).

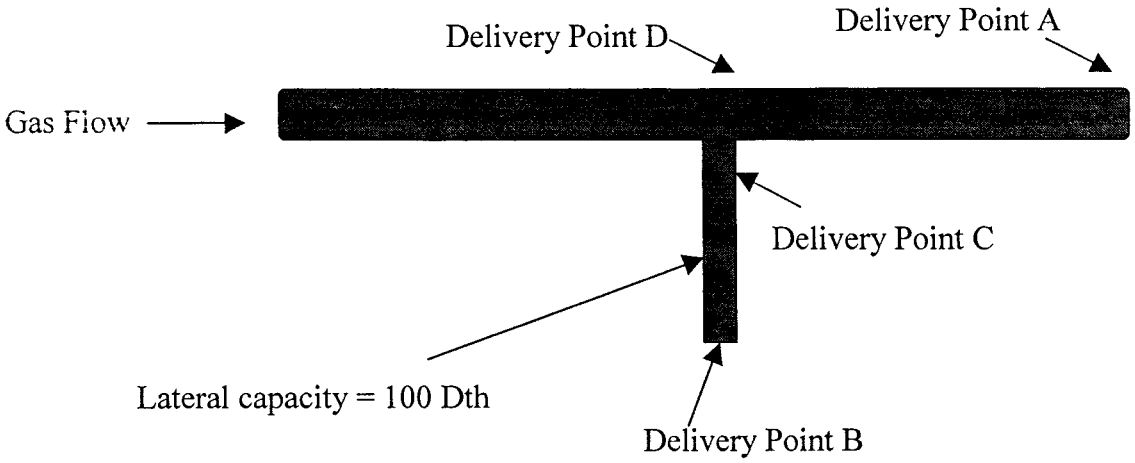
[118] *See* El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993) (pipelines could propose methods for limiting the potential for hoarding).

[119] Order No. 637, 65 FR at 10194, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,301–302; Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,991. *See also* Transwestern Pipeline Company, 61 FERC ¶ 61,332, at 62,232 (1992).

[120] Order No. 637, 65 FR at 10195–96, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304.

demand, since the pipeline has no capacity left to sell and, therefore, needs to reserve no receipt point capacity in order to sell unsubscribed capacity.[121]

El Paso contends that providing shippers with the right to select multiple delivery point rights along a path could detrimentally affect the rights of existing shippers. It provides an example in which a lateral off the mainline can support only 100 Dth of capacity and a shipper at the terminus of the lateral (Delivery Point B) already has primary point capacity of 100 Dth on the lateral. El Paso maintains that if another shipper with a primary delivery point (Delivery Point A) can subscribe to an upstream point on the lateral (Delivery Point C) on a primary basis, the downstream shipper on the lateral could lose its primary point priority.



This argument misapprehends Commission policy. The new shipper could not obtain a primary delivery point at Delivery Point C, because no capacity on the lateral is available at that point; the lateral capacity is fully subscribed. In order for shippers to obtain primary points, the mainline capacity to that point must be available. Thus, the shipper with a primary delivery point at Delivery Point A could obtain another primary delivery point at Delivery Point D, because the shipper has sufficient mainline capacity to deliver to that point. As pointed out previously, the selection of this new delivery point would not increase the shipper's mainline contract demand. It would only permit the shipper to choose to deliver to Delivery Point A or Delivery Point D on a primary basis.

The resolution of issues relating to the allocation of primary point rights in segmented transactions will have to be addressed in each pipeline's compliance filing. Pipelines will have to include justifications, based on the operational characteristics of their systems, for restrictions on the extent to which shippers and replacement shippers can change primary points or can revert back to the original points at the end of a release or segmented transaction.

Point discounts. Kinder Morgan and Koch request clarification that in implementing segmentation, the Commission will continue its current policy under which discounts granted with respect to specific points do not apply when the shippers change points. They contend that if a shipper seeks to use different points as part of a segmentation transaction, the shipper will not be entitled to continue its discount.

This issue also needs to be considered in the pipelines' compliance filings. In the restructuring proceedings to implement Order No. 636, the Commission's policy was to permit pipelines to limit a shipper's discount to particular receipt and delivery points. A shipper with a discount contract to particular points would be subject to the pipeline's maximum rate if it, or a replacement shipper, chose to exercise its right to use flexible receipt or delivery points.[122] The justification for this policy was that market conditions may vary on a pipeline, and the pipeline, therefore, should be permitted to structure its discounts to meet the prevailing market conditions.

The Commission still recognizes that pipelines may have underutilized segments of their pipelines for which they may need to offer discounts in order to increase throughput and that such discounts should not necessarily entitle shippers to move gas in more highly utilized portions of the pipeline, where the pipeline can obtain the maximum rate for transportation service. This would occur particularly on pipelines with postage stamp rate systems where the same maximum rate applies throughout the system, even though utilization patterns may differ across the system, as well as for pipelines with large zones where utilization may differ within a zone.[123] What is less clear, however, is whether the Commission's previous policy should continue to be applied for segmented transactions that occur within the path of the shipper's transportation contract. Once the pipeline has decided that a discount is needed to stimulate throughput in a section of the pipeline, that shipper should be permitted to use flexible point rights and segment capacity along that capacity path without incurring additional charges.[124] The Commission recognizes that not all pipelines follow straight-line paths and, therefore, in order for some pipelines to implement segmentation, restrictions on segmentation for discounted contracts may be necessary. These issues should

[121] Even if the pipeline is not fully subscribed, it could protect its ability to sell available mainline capacity by reserving an appropriate percentage of the receipt or delivery point capacity to be associated with the unsubscribed mainline capacity.

[122] El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,990–91 (1993); ANR Pipeline Company, 62 FERC ¶ 61,079, at 61,562–63 (1993).

[123] *See* Questar Pipeline Company, 69 FERC ¶ 61,119 (1994) (applying policy to a postage stamp system).

[124] On a long-line pipeline, for instance, once the pipeline has discounted transportation to a downstream delivery point, it has foreclosed the possibility of selling that same capacity at a higher rate to an upstream delivery point. The discount, therefore, should apply to all transactions within the capacity path.

be addressed in the pipeline's compliance filings.

c. Implementation. El Paso requests clarification that the ability of shippers to segment through the nomination process applies only to shippers segmenting for their own use, not to shippers seeking to make a segmented capacity release transaction. El Paso maintains that allowing capacity release transactions through the nomination process would by-pass the bidding and posting procedures that apply to capacity release transactions. The Commission agrees that shippers subject to the posting and bidding requirements for capacity release transactions cannot avoid those requirements by designating a transaction as a segmented transaction.

El Paso and Kinder Morgan ask clarification concerning the implementation of the requirement that shippers be given the ability to segment capacity for their own use through the nomination process, without having to use the capacity release process to effectuate segmentation. El Paso asks that pipelines be able to implement shipper segmentation in different ways depending on the configuration of their existing computer system. Kinder Morgan asks that it be permitted to continue to use its capacity release mechanism to effectuate shipper segmentation for its own use until it can revise its computer systems to accommodate this process through the nomination process.

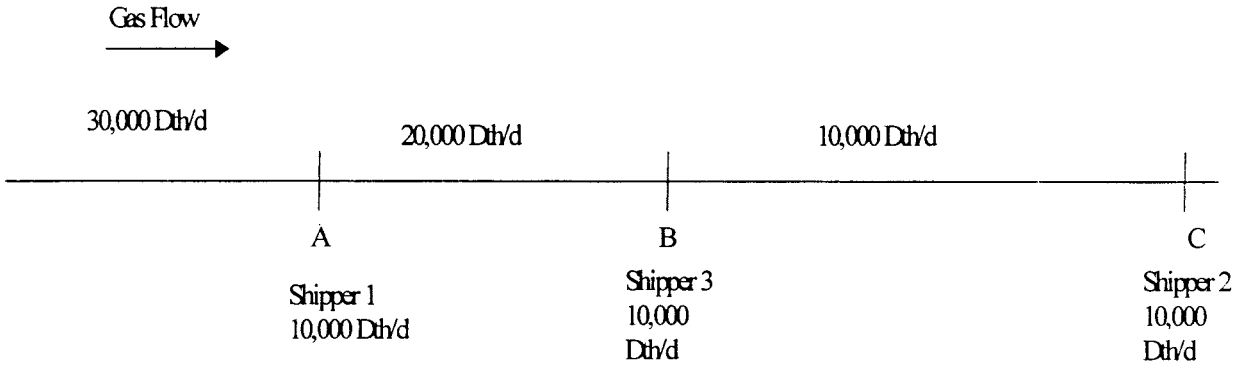
The Commission will expect pipelines to permit shippers to schedule segmented transactions for their own use in as efficient manner as possible through the nomination process and to revise their computer systems to permit such nominations as soon as is feasible. Until such computer revisions are made, pipelines should permit segmented transactions in the most efficient method feasible given their current computer configurations.

2. Mainline Priority at Secondary Points Within the Path

In Order No. 637, the Commission did not adopt a specific policy with respect to assigning priority over mainline capacity among shippers using secondary points when they pay the same rate for transportation within a zone.[125] Dynegy, National Energy Marketers, and NGSA contend the Commission should accord a higher priority to shippers seeking to use mainline capacity to reach secondary points within their capacity path than shippers seeking to use mainline capacity outside of their path. Dynegy and National Energy Marketers contend that according a shipper using a secondary point within its path a higher priority would help alleviate confusion with respect to state unbundling programs in which state officials are requiring marketers to hold primary firm capacity, rather than permitting them to use secondary capacity, because of concerns about reliability. Giving greater priority to shippers within their primary path, they assert, will alleviate the concerns about the reliability of secondary point transactions during constraint periods when pipelines limit deliveries. Dynegy maintains that, under the current system, it can often effectuate a delivery, but at a higher cost, by scheduling primary firm capacity and then purchasing an interruptible back-haul service to reach the secondary upstream point.

The Commission's goal in expanding segmentation and flexible point rights is to strengthen competition in the transportation market. As pointed out in Order No. 637, capacity allocation is most efficient when capacity is allocated to the shipper placing the highest value on obtaining the capacity. In order to provide for efficient allocation of capacity, shippers must have rights to capacity and be able to trade capacity so that the party placing the highest value can obtain it.[126]

In the situation presented by the rehearing requests, two shippers paying the same rate for capacity in a zone seek to use a secondary delivery point which is upstream of one shipper and downstream of the other. In the example below, shippers 1 and 2 pay the same rate for 10,000 Dth/d of capacity in the zone, with primary points at A and C respectively, and both shippers seek to deliver gas to point B. The pipeline is sized such that 30,000 Dth/d can be delivered to point A, 20,000 Dth/d to point B, and 10,000 Dth/d to point C.



The Commission's prior policy was to allocate mainline capacity using secondary points on a *pro rata* basis among shippers seeking to use those secondary points,[127] although some pipelines had been permitted to implement a within-the-path allocation methodology.[128] The justification for *pro rata* allocation was that two customers paying the same rate should receive the same priority of service to secondary points.

The Commission, however, is concerned that providing all shippers in a zone with equal scheduling rights to secondary points does not provide for the most efficient use of mainline capacity or promote capacity release

[125] Order No. 637, 65 FR at 10196–97, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,304–306.

[126] *See* R. Posner, Economic Analysis of Law, § 3.1, at 28 (2d ed. 1977) (exclusive property rights are necessary to promote trading).

[127] *See* Tennessee Gas Pipeline Company, 71 FERC ¶ 61,399, at 62,577 (1995) (cases cited therein).

[128] *See* Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202, at 61,870–71 (1997) (conditionally accepting within the path allocation); Northwest Pipeline Corporation, 67 FERC ¶ 61,095 (1994) (priority given to shippers moving within primary path).

because it creates uncertainty as to how much mainline capacity any shipper seeking to use secondary points will receive. Under *pro rata* allocation, neither shipper 1 nor shipper 2 has guaranteed rights to the mainline capacity for purposes of making deliveries to point B and, therefore, neither can trade those rights In addition, a shipper holding primary point capacity at point B (shipper 3) has a competitive advantage over either shipper 1 or shipper 2 in selling its capacity, since it can guarantee mainline capacity to point B and neither of the other two shippers can make a similar guarantee. As Dynegy and NEM point out, some state unbundling programs require shippers to obtain primary point capacity from the shipper at B in order to ensure that deliveries can be made.

The Commission, therefore, has determined to change its allocation policy to the within-the-path approach in order to improve competition. Under the within-the-path allocation approach, shipper 2 would have a higher priority than shipper 1 to use mainline capacity to reach secondary points within its capacity path. By using within-the-path priority, shipper 2 has a firm right to mainline capacity to delivery point B and, therefore, becomes a more effective competitor to the shipper holding primary point capacity at point B. Shippers needing capacity to point B now have a choice of buying mainline capacity from shipper 2 or shipper 3. Under this policy, shipper 2 would have primary mainline rights to ship to or beyond point B, but would have secondary rights to make deliveries at point B (unless shipper 2 is permitted to select B as an additional primary point as discussed previously).[129]

The Commission recognizes that because the pipeline in the example has a large rate zone that is not divided at constraint points, shipper 1 (the upstream shipper) pays the same rate as shipper 2 and receives less valuable rights under the within-the-path allocation. But it is not possible to allocate mainline capacity downstream of point A to shipper 1, because shipper 2 (with primary point rights at C) could preempt shipper 1's use of any capacity beyond point A by shipping gas to its primary point at C. Thus, the only method of creating tradable capacity rights is to give shipper 2 priority rights to all capacity upstream of its delivery point at C.[130]

The Commission therefore finds that the use of within-the-path priority better promotes efficient allocation of capacity and improves competition as compared with *pro rata* allocation and, accordingly, each pipeline must use the within-the-path allocation method in its compliance filing, unless it can demonstrate that such an approach is operationally infeasible or leads to anticompetitive outcomes on its system. The Commission encourages pipelines to look closely at their zone boundaries and to develop more efficient methods of allocating capacity based on price, so that capacity initially is allocated to the shipper placing the highest value on obtaining that capacity.

C. Imbalance Services, Operational Flow Orders and Penalties

In Order No. 637, the Commission determined that while OFOs and penalties can be important tools to correct and deter shipper behavior that threatens the reliability of the pipeline system, the current system of OFOs and penalties is not the most efficient system of maintaining pipeline reliability in the short-term market. The manner in which pipelines impose OFOs and penalties often restricts shippers' abilities to effectively use their transportation capacity. For example, OFOs can limit the ability of shippers to respond to prices in the market, undermining the fluidity of the commodity market.

The Commission also determined that Commission-authorized penalties provide an opportunity for shippers to engage in a form of penalty arbitrage, both across pipeline systems, and within a single pipeline system. Arbitrage activity imposes higher costs on all shippers on the system, and at peak, also may imperil systemwide reliability and trigger OFOs and emergency penalties. Further, many pipelines have responded to arbitrage on their systems by imposing stricter imbalance tolerances and higher penalties, which, in turn, often operate to limit and distort market forces.

Given the existence of arbitrage on and across pipeline systems, the Commission concluded that shippers are using penalties as a means to indirectly gain flexibility with respect to obtaining gas supplies and transportation capacity. Therefore, because the penalty system encourages shippers to engage in behavior that may be harmful to the system as a way to obtain needed flexibility, the Commission shifted its policy away from one that fosters the use of OFOs and penalties, to a ''service-oriented'' policy that gives shippers other options to obtain flexibility and relies on penalties only when necessary to protect system integrity. Specifically, Order No. 637 established three general policies designed to help give shippers positive incentives to use the pipeline appropriately to avoid the need for penalties and OFOs.

First, Order No. 637 required pipelines to provide separate imbalance management services, like park and loan service, to give shippers flexibility, directly.[131] The Commission explained that the imbalance management services, together with the provision of greater information about the imbalance status of shippers and the system, will give shippers a greater ability to remain in balance in the first instance, and thereby avoid penalties.

Second, Order No. 637 required pipelines to establish incentives and procedures to minimize the use of OFOs.[132] The Commission required each pipeline to revise its tariff to include a number of pipeline specific standards for the issuance of OFOs.

Third, Order No. 637 required pipelines to include in their tariffs only those penalty structures and levels that are necessary and appropriate to protect the system.[133] The Commission also required pipelines to credit the revenues from penalties and OFOs to shippers to eliminate the pipelines' financial incentive to impose penalties and OFOs.

Finally, Order No. 637 required each pipeline to either propose in its compliance filing *pro forma* changes to its tariff to implement the new requirements, or explain how its existing tariff and operating practices are already consistent with the new requirements.

The rehearing applicants seek rehearing and/or clarification of various aspects of each of the three new provisions. However, the petitioners do

[129] Shipper 2's ability to deliver gas using point B as a delivery point would depend on whether it has capacity on the downstream side of point B to take gas from the system. Providing for such take-away rights at city-gate points would be within the province of the state regulatory authority regulating the LDC at that point. With respect to priority at pipeline interconnects, the Commission, in Order No. 637, stated that such priority would be determined by pipeline confirmation rules, but that a shipper that has obtained firm capacity on both sides of the interconnect generally should have priority over a shipper that is using interruptible transportation on one of the pipelines, regardless of whether the firm shipper is using a secondary or primary point. *See* Order No. 637, 65 FR at 10197, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091, at 31,306–7.

[130] Under within-the-path allocation, if shipper 1 values the capacity to point B more than shipper 2, it can purchase the capacity from shipper 2. This would ensure that the capacity is allocated efficiently to the highest valued user.

[131] 18 CFR 284.12(c)(2)(iii).

[132] 18 CFR 284.12(c)(2)(iv).

[133] 18 CFR 284.12(c)(2)(v).

not oppose the core requirement that pipelines provide imbalance management services, but primarily seek rehearing of the new OFO and penalty provisions. Below, the Commission further details each of the new provisions and addresses the rehearing arguments related to each.

1. Imbalance Management

New section 284.12(c)(2)(iii) is an important component of the Commission's new policy focus to use positive incentives to achieve shipper behavior, rather than penalties or OFOs. In that section, the Commission established the policy that pipelines must provide to shippers, to the extent operationally practicable, imbalance management services, such as park and loan service, swing on storage service, or imbalance netting and trading. Pipelines will be permitted to retain the revenues from the new imbalance management services initiated between rate cases. As part of this requirement to provide imbalance management services, the Commission encouraged pipelines to design imbalance management services that would give shippers a built-in incentive to utilize the service, and to develop financial inducements for shippers to remain in balance or avoid behavior that is harmful to the system. In addition, the Commission stated in Order No. 637 that pipelines will not be permitted to implement the new imbalance services until they also implement imbalance netting and trading on their systems.

Rehearing requests were filed concerning the retention by pipelines of the revenue from imbalance management services between rate cases, and the applicability of the imbalance management service requirement to pipelines that do not impose imbalance penalties or OFOs. A number of requests for clarification of the requirement to offer imbalance management services were also filed. These are discussed below.

a. Retention of Imbalance Management Service Revenue Between Rate Cases. NASUCA and Penn./Ohio Advocate jointly, and Amoco argue that the Commission erred by allowing pipelines to retain the revenues from the new imbalance management services between rate cases. They argue that, since pipelines control the timing of rate cases and have no obligation to file a rate case, this policy could provide the pipeline with windfall profits at the expense of long-term shippers who pay 100 percent of the costs of the facilities used to provide those services.

NASUCA and Penn./Ohio Advocate argue that the Commission's general policy of permitting retention of revenues between rate cases should not apply here because the new services are being required as a remedy to existing unreasonable practices and procedures (*i.e.* gaming on pipeline systems), and pipelines should not be able to retain the benefits from such remedies. NASUCA and Penn./Ohio Advocate request that the Commission require pipelines to credit all of the imbalance management service revenues to firm shippers. Alternatively, they propose that the revenues be shared between the pipeline and long-term firm shippers, perhaps providing pipelines with a 10 percent share to encourage the pipelines to provide the services.

Amoco argues that if a pipeline's penalty free imbalance tolerance is set at an unreasonably low level, the retention of the imbalance management services revenues could result in significant windfalls. Amoco requests that pipelines not be permitted to retain imbalance service revenues, but be required to implement either an annual rate recalculation or a tracker mechanism to ensure that the pipeline does not overrecover its costs. Amoco also seeks clarification that pipelines will not be permitted to reduce or eliminate existing imbalance tolerance levels to levels that effectively force utilization of the new services.

As the Commission stated in Order No. 637, ''[i]n order to give pipelines an incentive to develop these new imbalance management services, the Commission is not changing its current policy that pipelines may retain the revenues from a new service initiated between rate cases.'' [134] The Commission has decided not to change that policy in the context of the new imbalance management services being required here.

In requiring that pipelines offer imbalance management services to the extent operationally practicable, the Commission's goal, as stated in Order No. 637, is for pipelines to provide as many different imbalance management services as the pipeline can operationally, and to develop innovative imbalance management services that might not currently exist. It is important for pipelines to have an incentive to develop, create, and offer such new imbalance management services. The pipelines' retention of 100 percent of the revenues between rate cases provides an incentive for pipelines to offer imbalance management services and ensures that the use of imbalance management services will supplant the need for penalties. Allowing pipelines to retain only a *de minimus* share of the revenues will not provide an adequate incentive to develop and provide the services.

In response to Amoco's concern, pipelines will not be permitted to arbitrarily reduce or eliminate imbalance tolerance levels and increase penalty levels in an effort to force shippers to use imbalance management services, since the Commission is requiring pipelines to implement and justify reasonable tolerance and penalty levels. All such proposed changes will be reviewed by the Commission comprehensively along with all of the pipeline's imbalance management services to ensure that the impact of the services and penalties work together to achieve the Commission's policy objectives.

b. Who Must Comply. Michigan Gas Storage argues that the Commission should not require pipelines that do not impose OFOs or collect imbalance penalties to provide imbalance management services or information on shippers' and the systems' imbalance status.[135] Michigan Gas Storage asserts that because the purpose of requiring imbalance management services is to minimize the imposition of OFOs and penalties, there would be no apparent purpose served by requiring pipelines that neither impose OFOs or collect imbalance penalties to provide imbalance management services or imbalance status information.

The Commission agrees with Michigan Gas Storage that if a pipeline's tariff does not include OFO provisions and imbalance penalty provisions, it need not provide imbalance management services or information on imbalance status. The Commission's goal in requiring pipelines to provide imbalance management services and greater information regarding imbalances is to enable shippers to avoid imbalances so that they will not incur penalties or be subject to an OFO. If a pipeline has no authority to issue OFOs or to assess penalties for either imbalances or OFO violations, then a shipper has no need for imbalance management services, and there is no need to require pipelines to offer such services. Pipelines that do not impose OFOs or collect penalties apparently do not have problems with shipper imbalances.

Accordingly, the Commission will amend the first sentence of section

[134] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,310.

[135] In new section 281.12(c)(2)(v), concerning penalties, pipelines are required to provide shippers with information on their imbalance and overrun status.

284.12(c)(iii) to state: ''A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances.'' Similarly, the Commission will amend the last sentence of section 284.12(c)(v) to provide: ''A pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system.'' However, if a pipeline that does not have such provisions in its tariff at any time decides to include OFO or imbalance penalty provisions in its tariff, then such pipeline must comply with sections 284.12(c)(iii) and (v).

c. Requests for Clarification. (1) Imbalance Netting and Trading. In Order No. 637, the Commission stated the following with respect to imbalance netting and trading:

> However, pipelines will not be permitted to implement the new imbalance services until they also implement imbalance netting and trading on their systems. Pipelines should not expect shippers to purchase new services until the shippers can determine whether imbalance trading will be adequate for their needs. Thus, the implementation of the new imbalance management services must coincide with the implementation of imbalance netting and trading. Since GISB has already approved business practice standards for netting and trading, pipelines should be able to implement imbalance netting and trading at the same time that they implement the new imbalance management services.[136]

Northern Distributor Group (NDG) requests clarification in two respects of the Commission's directive in Order No. 637 that pipelines implement imbalance netting and trading at the same time that they implement the new imbalance management services. First, NDG asserts that it is unclear whether the Commission established the Order No. 637 compliance filing date as the date certain by which pipelines must implement imbalance netting and trading, or whether the pipeline's obligation to implement imbalance netting and trading is dependent on whether the pipeline chooses to implement imbalance management services. NDG requests the Commission to clarify that regardless of whether a pipeline chooses to offer new imbalance management services on its designated compliance date, it must nevertheless offer imbalance netting and trading on that date. Second, NDG seeks clarification that a pipeline's implementation of imbalance netting and trading must be consistent with the GISB-approved netting and trading business practices.

In Order No. 637, the Commission determined that pipelines would be required to offer their shippers imbalance services. The Commission, however, determined that it would be unreasonable to expect shippers to purchase the new services unless the shippers first had an opportunity to evaluate whether imbalance trading would be sufficient for their needs. The Commission, therefore, imposed a moratorium on approving pipeline filings to establish imbalance services unless the pipeline has, or has proposed, an imbalance trading mechanism.

With respect to the pipeline's obligations to make compliance filings under Order No. 637, all pipelines are required to make *pro forma* compliance filings to establish the imbalance services they propose to comply with the Commission's regulation. Those services, however, will not be implemented until the Commission has reviewed the proposal and established an effective date. The Commission will not do so unless the pipeline has a pre-existing imbalance trading mechanism or one that will take effect at the same time as the imbalance services.

The Northern Distributor Group requests clarification as to when pipelines will be required to implement imbalance trading. In Order No. 587–G,[137] the Commission adopted a regulation requiring pipelines to implement imbalance trading, but deferred implementation of this regulation until GISB has developed the necessary standards. Although GISB initially had projected that such standards could be developed by June 30, 1998,[138] it has taken far longer to develop the necessary standards. GISB's Executive Committee has approved business practice standards for imbalance trading and GISB has now established an Expedited Data Development Subcommittee to develop the standards relating to the use of EDI for communication.[139] The Commission fully expects those standards to be approved quickly and, at that point, all pipelines will be obliged to implement those standards expeditiously. At the time when the imbalance trading standards are implemented, pipelines will be required to implement the imbalance services.

For a pipeline that wishes to implement imbalance services and imbalance trading at an earlier date, the pipeline should comply with the business practice standards already passed by GISB's Executive Committee. But the pipelines need only provide for imbalance trading on their Internet web sites. They do not need to establish EDI communication until GISB has approved the relevant technical standards for EDI.

(2) Third-Party Imbalance Management Services. New section 284.12(c)(iii) requiring pipelines to offer imbalance management services to its shippers also requires pipelines to provide their shippers with the opportunity to obtain imbalance management services from third-party providers. In describing section 284.12(c)(iii) in Order No. 637, the Commission stated that ''under this policy, pipelines will not be permitted to give undue preference to their own storage or balancing services over such services that are provided by a third party.'' [140] The Commission then stated, ''The Commission is requiring pipelines to include these imbalance management services as part of their tariffs.'' [141]

Koch is confused by the latter sentence quoted above. Koch states that if the Commission is requiring pipelines to permit third parties, within the scope of the pipeline's existing tariff provisions, to provide imbalance services, then it has no objection to the proposed changes. However, Koch objects if the Commission is requiring Koch to draft tariff provisions to implement services that third parties want to have included in Koch's tariff or to allow third parties the right to seek changes to Koch's tariff, outside the statutory requirements of section 5.

The Commission's intent was to require pipelines to include their own imbalance management services as part of their tariffs, not the third party's imbalance management service. However, the Commission expects the pipelines' tariffs to be crafted so that the pipeline will not unduly discriminate against shippers using other providers, or give undue preference to its own imbalance management services. For

[136] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,311.

[137] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 584–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

[138] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072, 20081 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062, at 30, 677 (Apr. 16, 1998).

[139] Http://www.gisb.org/edd.htm (announcing formation of Expedited Data Development Subcommittee).

[140] Order No. 637, 54 FR at 10199, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,310.

[141] *Id.*

example, the pipeline's tariff should not contain unnecessary restrictions that prevent third-party imbalance providers from competing with the pipeline.

Both Koch and Kinder-Morgan request clarification with respect to how imbalance management services by third parties will be provided and whether such third-party providers will be subject to the Commission's NGA jurisdiction. They request the Commission to clarify that the third-party providers will be subject to the same statutory requirements and standards for providing services in interstate commerce that pipelines are subject to, such as open-access requirements or the requirements of Order No. 497. Otherwise, argues Kinder-Morgan, pipelines will be at a significant competitive disadvantage. Kinder-Morgan argues that to the extent third-party services are provided, a number of conditions must apply.[142] In addition, Kinder-Morgan requests the Commission to identify who will be responsible if third-party providers of imbalance services fail to provide the necessary balancing, and that it should not be the pipeline that is the ''balancer of last resort.'' [143]

To the extent that the third-party providers are performing the interstate transportation of natural gas, as defined in the NGA, in their provision of imbalance management services, they will be engaging in a jurisdictional activity. However, a third-party provider may be able to provide imbalance management services that do not involve the interstate transportation of gas. Whether a third-party provider is performing jurisdictional transportation service is dependent on the characteristics of the particular imbalance management service being provided. For example, an imbalance management service provided by a third-party may consist simply of the sale of gas to make up an underdelivery. To the extent that the gas sale is a first sale, it would not be jurisdictional, and for jurisdictional gas sales, the Commission has already granted a blanket certificate to make sales for resale at negotiated rates.[144]

The Commission will not require that the conditions which Kinder-Morgan lists be attached to the provision of third-party imbalance management services. However, in their compliance filings, pipelines may include proposed tariff provisions for coordinating with third-party providers of imbalance services if such requirements are needed for operational purposes. Further, in the event a pipeline faces sufficient competition for imbalance management services from third party providers, the pipeline may be able to justify a request for market-based rates for that service.

(3) Clarification of Specific Phrases and Terms. Under section 284.12(c)(2)(iii), a pipeline must provide imbalance management services ''to the extent operationally practicable.'' Amoco requests the Commission to clarify that phrase. Amoco argues that under such discretionary language, a pipeline could refuse to comply on the basis of an assertion that such services are not operationally practicable. Amoco asserts that either the burden of proof should be placed on the pipeline to support such a claim, or the language should be eliminated.

The Commission agrees with Amoco that the burden of proof is on the pipeline to support a claim of operational impracticability. The pipeline must provide sufficient evidence demonstrating why the provision of imbalance management services is ''operationally impracticable.''

IMGA states its belief that Order No. 637 intended the term ''imbalance'' to apply to both physical and scheduling imbalances,[145] and requests the Commission to clarify that the use of the term ''imbalance'' throughout Order No. 637 encompasses both physical and scheduling imbalances. If the Commission did not intend for the term ''imbalances'' to refer to both types of imbalances, IMGA requests the Commission to indicate which type of imbalance it meant each time the Commission used the term in the preamble of Order No. 637. The Commission confirms that the term ''imbalance'' was intended to apply to both physical and scheduling imbalances.

2. Operational Flow Orders

In Order No. 637, the Commission found that the imposition of OFOs ''may severely restrict the purchase and transportation alternatives available to a customer during peak periods, precisely when such alternatives are critically needed to enhance the opportunities of a shipper to purchase such services at the lowest competitive prices.'' [146] Thus, new section 284.12(c)(2)(iv) establishes the principle that a pipeline must take ''all reasonable actions to minimize the issuance and adverse impacts of operational flow orders (OFOs) or other measures taken to respond to adverse operational events on its system.''

To implement this principle, the Commission required pipelines to revise their tariffs to adopt objective standards and procedures for the use of OFOs. Specifically, the Commission required each pipeline's tariff to: (1) State clear, individualized standards, based on objective operational conditions, for when OFOs begin and end; (2) require the pipeline to post information about the status of operational variables that determine when an OFO will begin and end, (3) state the steps and order of operational remedies that will be followed before an OFO is issued; (4) set forth standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront; and (5) establish reporting requirements that provide information after OFOs are issued on the factors that caused the OFO to be issued and then lifted.

On rehearing, only Koch and Kinder-Morgan take issue with OFO requirements imposed by Order No. 637. These arguments are discussed below.

a. Legal Authority and Need for OFO Standards and Procedures. Koch and Kinder-Morgan argue that the OFO provisions (as well as the penalty provisions discussed in the next section) violate section 5 of the NGA because the Commission has not made the requisite finding under section 5 that the existing OFO procedures are unjust, unreasonable, and unduly discriminatory. They assert that the Commission has departed without justification from the existing OFO policy established in Order No. 636 that OFOs are appropriate tools to deter harmful shipper conduct, and therefore, necessary for the pipeline to ensure system integrity in an open-access environment. Specifically, Koch and Kinder-Morgan assert that there is no record evidence supporting the Commission's finding that OFOs inhibit shipper flexibility, interfere with the fluidity of the commodity market, are a source of revenue, or are issued too frequently. Koch also disputes the Commission's decision to require all pipelines to revise their OFO

[142] Kinder-Morgan states that such conditions include, for example, Commission approval of the service prior to commencement, contractual privity between the third-party provider and the pipeline, and the availability of bi-directional flow at the delivery and/or receipt points involved. Request for Rehearing of Kinder-Morgan at 22.

[143] *Id.* at 23.

[144] 18 CFR 284.402 (1999).

[145] IMGA cites the Commission's discussion in Order No. 637 defining penalties as including penalties for physical and scheduling imbalances at 54 FR at 10197, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,317. IMGA Request for Rehearing at 10.

[146] Order No. 637, 54 FR at 10200, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,312.

procedures and standards instead of targeting only pipelines that are in fact issuing unnecessary OFOs. In addition, Keyspan requests clarification that if a pipeline proposes no change in its compliance filing, the Commission will act to make changes only when it is able to make the required section 5 findings.

In requiring pipelines to take actions to minimize the use and adverse impacts of OFOs, and to include objective pipeline-specific standards for the use of OFOs, the goal of the Commission is to enable pipelines to continue to use OFOs to protect pipeline integrity, without unnecessarily limiting or restricting competition in the market. The intent of the Commission is not to ban or restrict the use of OFOs so that pipelines may not impose OFOs when they are necessary to ensure system reliability. Rather, the new OFO policy and tariff requirements are designed to address the manner or way in which OFOs are being designed and imposed. The Commission seeks to ensure that they are being imposed only to the extent necessary to protect system reliability, and thus, that shippers are not needlessly restricted. In other words, the Commission is seeking ways for pipelines to use the proper mix of OFOs and positive financial incentives so that shippers can have as much flexibility as possible without causing operational problems that threaten reliability.

Therefore, the Commission has not departed from its existing policy that OFOs are appropriate tools for ensuring system integrity and reliability, and consequently need not find under section 5 that OFOs, *per* se, are unjust and unreasonable. Rather, the Commission has made a generic determination that the manner in which a pipeline imposes OFOs, or a pipeline's existing procedures or guidelines for its use of OFOs, may be unjust and unreasonable if the pipeline's issuance of an OFO unnecessarily restricts shippers' flexibility or is not well-defined, or if the OFOs are issued too frequently or stay in effect too long for the purpose of maintaining system reliability.

The Commission's findings that some pipelines are issuing OFOs that may be unnecessary for system reliability purposes, and that the manner in which some pipelines impose OFOs may unnecessarily restrict shipper flexibility, are based on adequate evidence. The Commission concluded from the comments to the NOPR,[147] and the Commission staff's own independent analysis of pipeline OFO tariff provisions, as well as the record in the cases cited in Order No. 637,[148] that the design and imposition of OFOs are not always tailored to ensure OFOs are imposed to preserve the integrity of system operations. For instance, the comments, tariff provisions, and cases revealed that OFO tariff provisions are not well defined, permit OFOs to be issued too frequently and to stay in effect too long, and do not give adequate warnings to shippers. All of this evidence provided the Commission with a reasonable basis upon which to require all pipelines to make a *pro forma* tariff filing to rejustify their current OFO provisions as just and reasonable.

Thus, the Commission has not yet made a section 5 determination that any particular pipeline's tariff regarding OFOs is, in fact, unjust and unreasonable. Any such section 5 determination will be made in the individual pipeline compliance filings. Such filings give individual pipelines, like Koch, the opportunity to show why their existing tariffs should not be considered unjust and unreasonable and that their tariffs are already in compliance with Order No. 637. In response to Keyspan, if the Commission finds that changes in a particular pipeline's tariff are warranted, the Commission will act under section 5 to implement such changes. Accordingly, the new OFO regulation does not violate section 5 of the NGA, and the Commission has acted within its authority.

b. The Reasonableness of the OFO Standards and Procedures. Kinder-Morgan and Koch argue that the Commission has not imposed a just and reasonable remedy to the allegedly unlawful existing OFO procedures. They argue that the new OFO procedures take away the pipelines' ability to manage their systems and jeopardize the provision of reliable service to customers. Kinder Morgan asserts that in situations where OFOs are issued, the concern should be whether deliveries to all customers can be maintained, not whether one shipper is unable to reduce its gas prices by a few pennies.

As the Commission stated above, the new OFO policy and requirement to establish OFO standards does not ban the use of OFOs and thereby remove pipelines' ability to control their systems. The Commission agrees that the reliability of service to all customers should be of greater concern than the reduction in one shipper's flexibility, where system reliability is a genuine or legitimate concern.

Kinder Morgan specifically argues the requirement, that pipelines set forth clear pipeline-specific standards based on objective operational conditions for when OFOs will begin and end, unduly constrains pipelines because it assumes both static conditions and perfect foresight. Kinder-Morgan asserts that operating conditions change over time, and the pipeline cannot predict all possible operating conditions that would justify issuance of an OFO. Kinder-Morgan also maintains the OFO tool should not be restricted because OFOs are particularly important to pipelines that have no storage or only limited storage, since they have no ability to absorb imbalances and counteract adverse operating conditions. Similarly, Koch requests clarification that the OFO policy to be implemented will be tailored specifically to meet Koch's operational needs, rather than those of some other pipeline.

Kinder-Morgan misinterprets what the Commission is requiring. The Commission expects pipelines to formulate the pipeline-specific OFO standards based on their reasonable expectation of potential operating conditions. The Commission is not prohibiting a pipeline from issuing an OFO until a particular predesignated operating condition actually occurs. The pipelines may build flexibility into the standards and procedures so that OFOs may be issued based on expectations or in anticipation of particular operating conditions. This flexibility is only limited by the need to draft standards that will give shippers clear notice of the instances when an OFO could be issued. The particular OFO standards applicable to each pipeline can be developed in the individual compliance filing proceedings, where the reasonableness of the standards can be determined in the context of the pipeline's complete imbalance management, penalty and OFO scheme. Further, the Commission clarifies that it is not requiring a set of rigid OFO standards invariant to the particular needs of individual pipelines. The Commission will permit considerable variation in the tariff provisions to enable pipelines to tailor OFO standards to fit the operational parameters of their

[147] *E.g.*, Comments of Shell Energy Services Company, L.L.C. at 17, Florida Cities at 7–8, and American Forest & Paper Association at 43.

[148] *See, e.g.*, NorAm Gas Transmission Company, 79 FERC ¶ 61,126, at 61,546–47 (1997); Southern Natural Gas Company, 80 FERC ¶ 61,233, at 61,890 (1997) Northern Natural Gas Company, 77 FERC ¶ 61,282 (1997); Panhandle Eastern Pipe Line Company, 78 FERC ¶ 61,202 (1997); Northwest Pipeline Company, 71 FERC ¶ 61,315 (1995). The Commission determined the validity of the claims made in these cases by conducting its own analysis of the pipelines' tariffs.

particular systems, such as the lack of storage facilities.

3. Penalties

New section 284.12(c)(2)(v) establishes three key principles. First, it provides that ''[a] pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service.'' The Commission recognized in Order No. 637 that unnecessarily high penalties have been imposed in the past, and that the penalties on some pipelines are at the same level during peak and non-peak periods, when the potential for the impairment of reliability may differ. The Commission stated that ''[n]on-critical day penalties, or penalties imposed during off-peak periods, may not be the most appropriate and effective to protect system operations.'' [149] Therefore, the Commission explained that it is requiring pipelines to narrowly design penalties to deter only conduct that is actually harmful to the system. The Commission directed all pipelines in their compliance filings to either explain or justify their current penalty levels and structures under this standard, or revise them to be consistent with this principle.

The second principle established by this regulation is that pipelines must credit to firm shippers all revenues from all penalties, net of costs, including imbalance, overrun, cash-out, and OFO penalties. The Commission determined that the elimination of the pipelines' economic incentive to use and impose penalties was necessary to shift pipelines to the use of non-penalty mechanism to solve and prevent operational problems. The Commission did not prescribe on a generic basis the details of the revenue crediting mechanism, including which shippers will receive the penalty revenue credits, but instead will permit each pipeline to formulate an appropriate method for implementing penalty revenue crediting on its system. However, the Commission did indicate that, ideally, penalty revenues should be credited only to non-offending shippers.

The third principle established by the new regulation is pipelines must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of its system as a whole.

On rehearing, the petitioners argue that the new penalty policy violates section 5 of the NGA and is unsupported by concerns regarding penalty arbitrage, restrictions on shipper flexibility, and penalties being a source of revenue. The rehearing applicants also argue that the Commission erred by limiting the use of penalties ''only to the extent necessary to prevent the impairment of reliable service,'' and by requiring the crediting of penalty revenues. In addition, several applicants request clarification of the revenue crediting requirement and what constitutes a penalty. Finally, one petitioner requests the Commission to implement a ''no-harm, no-foul'' policy.

a. Legal Authority and Need for New Penalty Policy. As they argue with respect to OFOs, Kinder-Morgan and Koch argue that the new penalty provision violates section 5 of the NGA because the Commission has not found existing penalties unjust and unreasonable. They assert that the Commission has departed without justification from the existing policy that recognizes that penalties are an appropriate tool to deter shipper misconduct. Kinder-Morgan and Koch argue that the Commission's findings that penalties encourage arbitrage and are a source of revenue are unsupported, and do not justify the Commission's remedy of limiting or eliminating the use of penalties.

The Commission acknowledges that penalties are an appropriate tool to protect system reliability. In Order No. 637, the Commission did not find the use of penalties, *per se,* to be an inappropriate method of protecting system integrity. The Commission did find, however, that (a) penalties, as currently designed and applied, are not always being used to ensure system reliability, and (b) penalties may not be the most appropriate way to preserve system reliability. The Commission found that there could be other ways for pipelines to ensure reliability, that did not involve the use of a negative deterrent.

Specifically, the Commission determined that the use of imbalance management services would be a better way to keep shippers from engaging in behavior that could adversely affect system reliability, especially since penalties provide the opportunity for arbitrage behavior. Thus, the Commission shifted its policy away from penalties and towards imbalance management services. Yet, the Commission nevertheless recognized that penalties could still be a valid mechanism to ensure system integrity, if penalty levels and structures were better designed to meet that purpose. Therefore, the Commission did not ''eliminate penalties altogether,'' as Kinder-Morgan seems to believe, but rather, redefined their role. Thus, the new penalty policy does not violate section 5 of the NGA because the Commission has not abandoned its existing penalty policy recognizing penalties as an important tool to protect system reliability; the Commission has shifted its policy focus to place less reliance on penalties.

The Commission's determinations that changes to the design and application of pipelines' penalty levels and structures are necessary, and the penalty system may not be the best way to ensure system reliability, are adequately supported. The fact that arbitrage is occurring and that penalties provide the opportunity for shippers to engage in arbitrage is well documented by a number of cases in which pipelines sought higher overrun and imbalance penalties and lower tolerances specifically in response to arbitrage activity on their systems.[150] The Commission agrees with Kinder-Morgan that the existence of arbitrage does not justify the elimination of penalties; the Commission is not eliminating penalties. However, the fact that arbitrage is occurring not only across pipeline systems but within pipeline systems demands that pipelines revise the level and structure of their penalty provisions to minimize the opportunity for arbitrage. For example, as the Commission stated in Order No. 637, pipelines may be able to change their imbalance cash-out procedures or methods to eliminate the incentives for shippers to borrow gas from the pipeline because the cash-out price is less than the market price for gas.[151]

The Commission also determined after review of the comments to the NOPR that high penalties and low or no tolerances can operate to restrict shipper flexibility and distort market forces and are not effective in deterring harmful conduct and protecting system reliability.[152] Further, the penalty tariff

[149] Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,314

[150] *E.g.,* Northern Natural Gas Company, 77 FERC ¶61,282 at 62,236 (1997); Panhandle Eastern Pipe Line Company, 78 FERC ¶61,202 at 61,876–77 (1997), *reh'g denied,* 82 FERC ¶61,163 (1998); and Williams Natural Gas Company, 78 FERC ¶61,342 (1997).

[151] Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶31,091 at 31,314–15.

[152] *E.g.,* Comments of Dynegy, Chapter 6 and Appendix B; Comments of Proliance Energy, LLC at 4–5. In Appendix B of Dynegy's comments, Dynegy provided a review of the significant penalty cases in the recent past, and its assessment of current penalty and OFO tariff provisions. In one of the cases cited by Dynegy, Williams Natural Gas Company, 78 FERC ¶61,342 at 62,462 (1997), the parties argued that the high contract overrun penalties being sought would prompt responsible shippers to oversubscribe to transportation capacity solely to provide a safety margin, rather than deter harmful conduct.

provisions proposed by the pipelines in the penalty cases cited above, led the Commission to conclude that penalty provisions needed to be better crafted and defined, and better tailored to address potential harm to system reliability.

Thus, as the Commission similarly explained with respect to the new OFO policy, *supra*, the Commission has not yet made a section 5 determination that any particular pipeline's penalty provisions is, in fact, unjust and unreasonable. Any section 5 determination will be made in the individual pipeline compliance filings, and such determinations will be made on specific findings that the existing penalty provisions are unjust and unreasonable, and the replacement provisions are just and reasonable.

b. Limitation of Penalties Only to the Extent Necessary to Prevent the Impairment Of Reliable Service. Kinder-Morgan and CNGT object to the Commission's limitation on the use of penalties ''only to the extent necessary to prevent the impairment of reliable service.'' [153] CNGT argues that the limitation allowing penalties only to the extent necessary to prevent the impairment of reliable service is overly restrictive because system reliability is only one purpose of penalties. CNGT argues that penalties also serve to enforce contractual rights, obligations, and limitations, and to discourage penalty arbitrage.

Further, Kinder-Morgan and Keyspan raise questions about whether the requirement that penalties must be necessary to prevent the impairment of reliable service prohibits pipelines from issuing penalties during non-critical periods. Kinder-Morgan takes issue with what it believes is the Commission's assumption underlying this provision—that penalties simply are ''not required.'' [154] Kinder-Morgan argues that pipelines may need penalties to maintain system integrity during non-critical periods, as well as during critical periods. Conversely, the Industrials request the Commission to require pipelines to use a ''no harm/no foul'' mechanism, unless the pipeline is operationally constrained from doing so.

The Commission denies the requests to change the requirement that penalties be justified solely on the basis of system reliability. The pipelines themselves recognize that ''the fundamental purpose of penalties and OFOs is to protect the reliability of service to all shippers * * * '' [155] It was precisely this purpose that the Commission recognized in Order No. 636, when it permitted pipelines to develop and utilize OFOs and penalties as system management tools. Thus, the requirement that pipelines impose penalties ''only to the extent necessary to prevent the impairment of reliable service'' simply reflects a formalized requirement that pipelines use penalties exclusively for their intended purpose. The Commission is not permitting pipelines to impose penalties for other purposes, such as the enforcement of contractual obligations, where unrelated to system reliability. The Commission has determined that shippers should be given the flexibility to exceed contractual limitations, unless such action jeopardizes system reliability and integrity. For example, if a shipper overruns its contractual entitlement, and its action does not affect the reliability of the pipeline's service, there is no reason for the pipeline to charge a penalty. Of course, however, the pipeline may charge the shipper for the additional transportation service.

The question whether penalties may be imposed during non-critical periods needs to be determined in the pipelines' compliance filing proceedings and cannot be decided in the abstract. Contrary to Kinder-Morgan's statement, the Commission did not find that penalties are ''not required.'' [156] The Commission reiterates that penalties may be required, especially during critical periods when system reliability is most in jeopardy. With respect to penalties during non-critical periods, the Commission stated, ''[u]nder the regulations adopted in this rule, pipelines will only be able to impose penalties to the extent necessary. This requirement may result in *either* no penalties for non-critical days or higher tolerances and lower penalties for non-critical as opposed to critical days.'' [157] The Commission will examine such issues in the individual compliance filing proceedings, where the Commission can evaluate how the proposed imbalance management services, OFO provisions, and penalty structures all work together, as an overall program of system management.

c. Crediting of Penalty Revenues. Only Koch and CNGT seek rehearing of the Commission's decision to require pipelines to credit penalty and OFO revenues, net of costs, to shippers. Koch argues that crediting the penalty and OFO revenues weakens the deterrent function of penalties, which are designed and have been implemented to deter abusive shipper behavior. Koch maintains that there is nothing inherently wrong with shippers being punished for their inappropriate actions. Koch asserts that requiring the penalty revenue to go back to the shippers, offending or not, is unwarranted because they have not assumed any of the risks that warrants receipt of such compensation. Koch states that penalties are designed to compensate pipelines for the risks they face from a shipper that is outside the parameter of the pipeline's tariff. Koch also claims that the Commission's concern about penalties being profit centers for pipelines is not applicable on all pipelines. Koch states that it has received virtually no penalty revenue since its Order No. 636 tariff became effective.

CNGT seeks rehearing of the requirement to credit penalty revenues if the Commission continues to strictly limit penalties to reliability needs.

The goal of the Commission's new policy on penalties is to encourage pipelines to rely less on penalties and more on non-penalty mechanisms to manage their systems, such as imbalance management services, and to design and impose only necessary and appropriate penalties. Allowing pipelines to retain the revenues from penalties provides pipelines with a financial incentive to impose penalties where they may not be required to ensure system reliability, or to set penalties at inappropriate levels. It also can discourage pipelines from developing the other, non-penalty mechanisms that might give shippers positive incentives to control their imbalances. Therefore, the Commission must require the crediting of penalty and OFO revenue to eliminate the financial incentive that retention of penalty revenue provides the pipeline. Only by removing this incentive will pipelines begin to rely on other management techniques and use penalties less. Thus, the Commission

[154] Request for Rehearing of Kinder-Morgan at 11, quoting Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶31,091 at 31,314.

[155] Request for Rehearing of Kinder-Morgan at 8.

[156] Kinder-Morgan relies on the following statement by the Commission, but misinterprets it: ''First, penalties are not required, but to the extent that a pipeline assesses penalties, they must be limited to only those transportation situations that are necessary and appropriate to protect against system reliability problems.'' Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,314. This first clause of the statement was intended to clarify that the Commission was not requiring pipelines to include penalties in their tariffs or to impose penalties on their shippers, and was not an affirmative finding on the merits that penalties are not required.

[157] Order No. 637, 54 FR at 10202, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,317 (emphasis added).

reemphasizes that the crediting of penalty and OFO revenues to firm shippers is necessary to eliminate the pipelines' incentive to utilize penalties.

The Commission recognizes that penalties serve a deterrent function. The deterrent function is a legitimate function where the penalty is narrowly designed to protect the integrity of the system. The crediting of penalty revenues arguably will weaken the deterrent function, as Koch maintains, only to the extent significant revenue is credited back to the offending shippers. While the Commission is not requiring that the revenue be credited exclusively to non-offending shippers, the Commission's objective is that where possible, pipelines should credit the revenue only to non-offending shippers.[158] Further, while Koch is correct that there is nothing inherently wrong with using a punishment such as a penalty as a deterrent, the Commission has determined that a more effective and less restrictive way for pipelines to maintain control of their systems is for pipelines to rely on services and incentives that enable and encourage shippers to behave appropriately without the threat of punishment.

Several pipelines request clarification of the revenue crediting requirement. Coastal requests the Commission to clarify that a pipeline's responsibility to credit penalty revenues is net of any costs incurred (i.e. demand credits to customers whose service was curtailed) or revenues foregone by pipeline as a result of the actions which resulted in penalty being assessed. Similarly, Tejas requests the Commission to clarify that OBA charges may be netted against any penalty revenue. In addition, Paiute requests clarification that under the cost netting exclusion, it will be permitted to retain scheduling penalty revenues that it assesses to its shippers during Northwest Pipeline Corporation's Declared Entitlement Periods because the Northwest penalties assessed Paiute during Declared Entitlement Periods represent a cost to Paiute. Finally, Enron requests clarification that the revenue crediting mechanisms take into account penalty revenues included in developing underlying rates. Enron maintains that until a pipeline's next general rate case, crediting should only be required with respect to net penalty proceeds that exceed any amounts included in developing existing rates (whether through an allocation or though the inclusion of representative penalty levels). Otherwise, states Enron, the double counting of penalty revenues would result.

These issues may depend on the facts of individual cases. Pipelines that seek to net out costs incurred as a result of a shipper's actions that caused the penalty to be assessed must demonstrate that the shipper's conduct in fact caused such costs. Similarly, pipelines seeking to offset penalty revenues included in developing underlying rates should include in their compliance filings a detailed description of how penalty revenues were included in designing their rates. The Commission will consider these matters, along with other factors, to determine the appropriate revenue crediting in each case.

Coastal requests the Commission to allow pipelines to establish a surcharge mechanism in their tariffs to impose surcharges on customers who receive penalty credits to allow the pipelines to recover those credits if additional costs are found attributable to the penalty event after the refund is made. The Commission will not allow pipelines to establish a surcharge mechanism to recoup revenue credits from firm customers to recover additional costs discovered after-the-fact. The Commission expects pipelines to build into their revenue crediting mechanisms a reasonable amount of time in which to accurately determine the true level of costs and revenues before actually crediting the revenues.

Koch asks for clarification in a number of respects on how to implement revenue crediting on its system. The Commission is not requiring any particular revenue crediting mechanism; pipelines may propose whatever implementation mechanism is best for their systems. The Commission will address any questions regarding the implementation of revenue crediting in the individual pipeline compliance proceedings.

d. Other Requests for Clarifications. A number of rehearing applicants request clarification with respect to what constitutes a ''penalty.''[159] For example, the Industrials seek clarification that Order No. 637 applies to all operational limits that have punitive or disciplinary effects and to any tariff provision that may trigger an additional charge or punitive action to shippers. Tejas seeks clarification whether a tiered cash-out program constitutes a penalty, and Koch questions whether unauthorized gas overrun charges are penalties. Keyspan requests clarification whether pipelines are required to explain all penalties, or just imbalance penalties.

The Commission considers a penalty to be any charge imposed by the pipeline on a shipper that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Thus, the term ''penalty'' was intended to encompass more than just imbalance penalties, and includes, for example, scheduling, OFO, and unauthorized overrun penalties, as well.

While a tiered cash-out program is a penalty mechanism, a cash-out mechanism that only requires the shipper to reimburse for the cost of gas provided by the pipeline is not a penalty. However, some shippers allege that certain pipelines' cash-out mechanisms operate as penalties.[160] Therefore, the Commission expects pipelines to include in their *pro forma* compliance filings their cash-out provisions, in addition to their provisions for imbalance management services, netting and trading, OFOs and penalties. The Commission cannot evaluate the components of a pipeline's system management program, such as the cash-out mechanism, in isolation. The Commission must consider the imbalance services, and netting and trading, OFO, and penalty provisions together to evaluate how they function together in light of the pipeline's characteristics. This evaluation will occur in the individual compliance filing proceedings.

III. Reporting Requirements for Interstate Pipelines

A. Transactional Information

To equalize the reporting requirements for capacity release transactions and pipeline transactions, and to simplify the overall reporting system, Order No. 637 required pipelines to report the same transactional information about both their own firm and interruptible transactions, and their released capacity transactions, and established a single, new reporting requirement for this transactional information. Section 284.13(b)(1) requires the pipeline to post transactional information on its Internet web site contemporaneously with the execution or revision of a contract for firm service. For interruptible transportation, section 284.13(b) requires pipelines to post the information on a daily basis. Further, pipelines are required to keep this firm and interruptible transactional information available on their web sites

[158] The Commission stated in Order No. 637 that ''[i]deally, penalty revenues should be credited only to non-offending shippers.'' Order No. 637, 54 FR at 10201, III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 at 31,315.

[159] Requests for Rehearing of Industrials, Keyspan, Koch, and Tejas.

[160] Request for Rehearing of Industrials at 72.

for 90 days, and to archive this information for a period of three years after the 90-day period expires.[161]

Rehearing requests have been filed concerning the new transactional reporting requirements on two main grounds '' confidentiality and burden. With respect to confidentiality, as described more fully below, the rehearing applicants, largely marketers, essentially argue that the information in the new transactional reports is commercially sensitive information, which if disclosed publicly and, particularly, contemporaneously with the transaction, will cause competitive harm to shippers. With respect to burden, the pipeline applicants maintain that the magnitude of the information required to be reported is burdensome to the pipelines. In addition, rehearing applicants seek revision or clarification of certain of the specific transactional data elements.

The reporting of detailed transactional information is necessary to provide shippers with price transparency for informed decisionmaking, and the Commission and shippers with the ability to monitor transactions for undue discrimination and preference. The need for more informed decisionmaking capabilities and the ability to monitor for undue discrimination arises because the Commission is making changes in the way it regulates the natural gas industry, fostering competition where it can and moving toward lighter-handed regulation where it can. Specifically, the Commission is removing the rate cap from short-term capacity releases, and thus will be relying on competitive forces, as well as some regulatory controls, to protect against the exercise of market power. As a result, it becomes increasingly important to provide good transactional information to facilitate competition for pipeline capacity and between pipeline capacity and released capacity, and to monitor the market for potential undue discrimination or preference.

The disclosure of greater information regarding capacity transactions is necessary to achieve these dual goals of fostering competition and market monitoring. To foster competition, it is not sufficient merely to ensure there are multiple competitors, there also needs to be good information to enable buyers to make informed choices among the competitors. As the Commission explained in Order No. 637 [162] in discussing the removal of the short-term capacity release rate ceiling:

> Difficulty in obtaining information can reduce competition because buyers may not be aware of potential alternatives and cannot compare prices between those alternatives. The reporting requirements will expand shippers' knowledge of alternative capacity offerings by providing more information about the capacity available from the pipeline as well as those shippers holding capacity that is potentially available for release. The reporting requirements further will provide shippers with more accurate information about the value of capacity over particular pipeline corridors so that shippers can make more informed choices about the prices of capacity they may wish to purchase.

In addition, requiring detailed information about pipeline transactions to be reported, where very little had previously been required, will increase and improve competition by equalizing the information available to the market for capacity release transactions and pipeline transactions. Since pipeline capacity and released capacity now compete head-to-head, shippers must have the same information about both. Further, the reporting of increased information on pipeline transactions is important to enable pipeline service pricing to discipline capacity release pricing, acting as a check on any market power in the secondary market.

Reporting of data associated with capacity transactions is also critical to monitoring the market for undue discrimination or preference. The more detailed transactional information that is made available to market participants and the Commission, the better able both shippers and the Commission will be to identify situations in which market power is being abused, and the information will enable the Commission to tailor specific remedies. Moreover, the reporting of detailed transactional information is necessary not only for the monitoring of the current market for abuses of market power, but also for the Commission to assess the need for further regulatory reforms in the future.

As discussed further below, because of the importance of detailed transactional information for market monitoring and informed decisionmaking, the Commission generally is denying the rehearing requests that object to the new transactional reporting requirements on the basis of confidentiality and burden. However, the Commission is granting rehearing of the requirement that the firm transactional data must be posted contemporaneously with contract execution. The Commission is adjusting the timing of disclosure to require firm and interruptible transactional data to be posted no later than the first nomination for service.

1. Confidentiality

a. Need for Transactional Information. Columbia Gulf argues that the Commission has not justified the need for requiring the disclosure of confidential information. Columbia Gulf asserts that the Commission's finding that disclosure of detailed transactional information is necessary to provide shippers with improved decisionmaking and monitoring abilities is unsupported.[163] Columbia Gulf also questions why the Commission is requiring the detailed transactional information in light of the fact that natural gas commodity costs are already publicly available and widely scrutinized, and the industry itself, through GISB, has already determined the information that needs to be posted.

As the Commission explained above, the reporting of detailed transactional information is necessary because the Commission is modifying its method of regulating the natural gas industry by replacing traditional regulatory controls, such as the price cap on short-term capacity releases, with competition. Thus, greater transactional information is necessary to ensure that competition flourishes, and that market power and undue discrimination remain in check in the new competitive environment. To the extent that Columbia Gulf maintains that improved decisionmaking and market monitoring can occur without requiring greater information, the Commission finds it axiomatic that greater, more complete and detailed information about transactions will greatly improve shippers' ability to make informed decisions, and both the shippers' and the Commission's ability to monitor the market.

Further, while natural gas commodity costs are publicly available, as Columbia Gulf notes, information about transportation transactions, particularly transportation prices, is necessary to effectively evaluate the information about gas prices. Finally, the Commission will not defer to GISB with respect to the information that the industry needs. GISB is not a regulatory body and the market is not self-regulating.

[161] 18 CFR 284.12(c)(3)(v).

[162] Order No. 637, 65 FR at 10184, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091 at 31,283.

[163] For example, Columbia Gulf disputes the Commission's statement that ''[s]hippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek.'' Order No. 637, 65 FR at 10206, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091, at 31,324. Request for Rehearing of Columbia Gulf at 5. Williston Basin also disputes this point. Request for Rehearing of Williston Basin at 7.

b. Competitive Harm. Several marketers and two pipelines seek rehearing of the Commission's decision to require pipelines to publicly post data about their capacity transactions, such as shipper names, individual contract numbers, and receipt and delivery points.[164] They argue that such data are confidential information, and if publicly disclosed, will create unfair competition and competitive harm.

For example, Columbia Gulf argues that marketing strategies for both pipelines and shippers would be revealed, and bundled sales activity would increase, resulting in decreased price transparency and competition. Dynegy and NEMA argue that by tracking chain of title from individual contract number and receipt and delivery points, shippers will be able to learn immediately of other shippers' supply sources and markets. They argue that the knowledge of other shippers' supply sources and markets and the rates shippers pay for transportation will enable shippers to undercut one another's transactions. Thus, Dynegy and NEMA argue that the disclosure of the transactional information will seriously threaten the continued development of competitive gas markets and pose great risks to gas marketers whose business relies on fashioning creative packages of services at competitive prices.[165]

Williston Basin argues that the posting of the transactional information will enable shippers to know their competitors' supply and markets, and what other shippers are paying, which might prevent Williston Basin from being able to negotiate the best price for the services it offers. In addition, some rehearing applicants, most notably Columbia Gulf and Williston Basin, assert that the Commission in Order No. 637 has failed to balance the benefits of disclosure of confidential information against the harm that would be caused by divulging the commercially sensitive information.

Most of the rehearing applicants objecting to the new transactional reporting requirements on the basis of confidentiality request that the Commission either exclude the commercially sensitive data from that required to be reported, allow pipelines to file the transactional information only with the Commission under protected status, or delay the posting of the information so it is not required to be posted contemporaneously with the execution of the contract.

The Commission remains unpersuaded that the information in the transactional reports is commercially sensitive data that are entitled to confidential treatment. Section 4 of the Natural Gas Act and the NGA's general statutory scheme clearly contemplates full disclosure of contractual terms and prices, as a means of preventing undue discrimination. Section 4(b) of the NGA provides that no natural-gas company may, with respect to any jurisdictional transportation or sale of natural gas, ''make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage,'' or ''maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, * * *''[166] The immediately following section, section 4(c),[167] sets forth the means for ensuring that such undue discrimination or preference does not occur:

> Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time * * * and in such form as the Commission may designate, and *shall keep open in convenient form and place for public inspection*, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required.

Under new section 284.13(b) of the regulations, the Commission is requiring pipelines to post the following data: the name and identification number of the shipper receiving service under the contract, the contract number, the rate charged under each contract, the maximum rate, the duration of the contract, the receipt and delivery points and zones or segments covered by the contract, the contract quantity or volumetric quantity, special terms and conditions applicable to a capacity release and special details pertaining to a transportation contract, and whether there is an affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. As is evident, the transactional information the Commission is requiring to be reported, and that those requesting rehearing want to remain confidential, is for the most part information that either is an inherent part of, or included in, the very transportation contracts the NGA requires to be disclosed. The affiliate relationship is the only piece of information required that may not necessarily be reflected in the contract. However, those requesting rehearing do not argue that that particular data element is commercially sensitive data.

Therefore, as the Commission held in Order No. 637, the posting of the transactional information is entirely consistent with the NGA's statutory framework intending for contracts to be publicly disclosed. Significantly, no party on rehearing has taken issue with the Commission's view of these statutory requirements.

Further, the full disclosure of all of the key contractual information—shipper name, contract number, contract quantity, rate charged, and receipt and delivery points—is consistent with the Commission's policy direction toward transparency in the market. The Commission has determined that the disclosure of information, rather than its concealment, will best help the market to function more efficiently and competitively, to the ultimate benefit of natural gas consumers.

The rehearing applicants allege that competitive harm will result, generally to individual firms, from the public disclosure of the transactional information. However, the Commission is unconvinced that the disclosure will result in competitive harm substantial enough to outweigh the pro-competitive and market monitoring purposes for which both the NGA and the Commission require the information to be disclosed.[168] The pipelines, those from whom the information would be obtained, do not explain precisely how competition will be harmed. Columbia Gulf tersely states that the marketing strategies of pipelines and shippers would be revealed. Williston Basin essentially argues that it will become

[164] Requests for Rehearing of Columbia Gulf, Dynegy, NEMA, Williston Basin, and Cibola.

[165] Request for Rehearing of Dynegy at 20 and Request for Rehearing of NEMA at 9.

[166] 15 U.S.C. 717(c) (1994).

[167] *Id.* (emphasis added).

[168] Part of the standard, as relevant here, for determining whether information is privileged or confidential employed under the Freedom of Information Act (5 U.S.C. 552), as amended by the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C.A. 552 (West Supp. 1997), and followed by the Commission when evaluating requests for confidential treatment, is whether the disclosure of the information is likely ''to cause substantial harm to the competitive position of the person from whom the information was obtained.'' *National Parks and Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). *See* section 388.112 of the Commission's regulations, governing requests for privileged treatment. 18 CFR 388.112.

more difficult for it to negotiate the best price for its services. The marketers, Dynegy and NEMA, focus on potential competitive disadvantage from the perspective of a service provider, but do not consider the benefits that they may realize as pipeline customers from the availability of transactional information. Thus, while disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in order to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.

Further, pipelines have been required to post for capacity release transactions virtually all of the information that they must now post regarding their own capacity transactions. However, no competitive harm has been alleged from the disclosure of the capacity release transactional data. Nor do any of the rehearing applicants argue that pipeline transactions require greater confidentiality than capacity release transactions.

The Commission recognizes that previously, during the time when pipelines were still natural gas merchants, the Commission allowed pipelines' negotiated gas sales rates to remain confidential from unregulated competitors.[169] The Commission recognized that in situations where pipelines were competing with other entities that were not required to disclose the same data, the pipelines could be commercially disadvantaged. Thus, to minimize such potential harm, the Commission made an accommodation with respect to the disclosure of the data. However, here, the Commission is requiring the disclosure of the same information for all segments of the industry. Therefore, there is no need in this instance for the Commission to make the same compromise with respect to public disclosure. Nevertheless, some of the competitive disadvantages that the rehearing applicants foresee will be tempered by the Commission's elimination, below, of the requirement that the transactional information must be posted contemporaneously with contract execution.

In sum, the Commission remains unclear precisely how either the pipelines, marketers, or the market as a whole will be substantially harmed by the disclosure of the transactional information. On the other hand, the Commission is convinced that to foster a competitive market, shippers need good information about their capacity alternatives. Accordingly, the Commission will neither eliminate any of the required information from the transactional report, nor confer confidential status on the information to be provided, on the basis of the allegations about potential competitive harm made here.

c. *Timing of the Posting of Transactional Information.* Section 284.13(b)(1) provides that pipelines must post the firm transactional information ''contemporaneously with the execution or revision of a contract for service.'' Several rehearing requests contend the Commission erred in requiring that the transactional information for firm transactions must be posted contemporaneously with contract execution.[170]

INGAA and Enron maintain that the requirement to post transactional information contemporaneously with contract execution puts pipeline services at a disadvantage compared to prearranged deals for released capacity. They point out that prearranged deals must be posted one hour prior to the first nomination deadline on the day before gas flows, well after the prearranged deals are executed.[171] Therefore, they request the transactional information required in section 284.13(b)(1) to be posted on the same timeline as prearranged deals.

Cibola, Dynegy, and NEMA contend that immediate posting, contemporaneous with contract execution, is not necessary for the purpose of monitoring for undue discrimination, and that the Commission has failed to adequately consider the adverse competitive consequences of contemporaneous reporting of firm capacity transactions. Dynegy and NEMA argue the Commission should require that the posting not occur until at least one week after service under the contract begins. Koch requests that the Commission require the transactional information to be posted within 24 hours of gas flow, consistent with Koch's current posting of discounts on its Internet website.

Conversely, Amoco argues that the Commission should reject any requests to delay the posting of the transactional information. Amoco argues that data must be filed contemporaneously with contract execution to have the desired mitigative and informational effects.

The statutory scheme of the NGA contemplates that pipelines cannot revise their rates schedules and charges until they provide the Commission with 30 days advance notice of the proposed change.[172] Most of the Commission's filing requirements reflect this statutory scheme, and require notice prior to the institution of service, rather than with respect to the execution of the contract. The Commission recognizes that contract execution may occur at a variety of different times in relation to when service takes effect. In some cases, the execution of a contract could occur significantly in advance of the commencement of service under the contract and in other cases it could occur after service commences.

To establish a consistent standard for transactional reporting, the Commission will not use the contract execution date to trigger the reporting of information. The Commission will grant rehearing and change sections 284.13(b)(1) and (2) to require the transactional information for both firm and interruptible service to be posted no later than the first nomination for service under the agreement. This modification also will minimize the potential for harm that some rehearing applicants, such as Dynegy and NEMA, have argued could result from disclosure well in advance of service.

The reporting of interruptible service needs to be somewhat different than that for firm service, because of differences in the form of contracting. Unlike firm service where the shippers' contract reflects the rate paid, shippers obtaining interruptible service frequently execute *pro forma* master contracts for interruptible service either at the maximum rate or without a specified rate. Shippers may not nominate under these master contracts for a period of time and often portions of those contracts, such as rate and other conditions, are modified by subsequent agreements between the pipeline and the shipper on a daily or monthly basis. For instance, a pipeline and shipper may agree to provide interruptible service for a particular month at discounted rate and that agreement may not be continued the next month. Therefore, with respect to interruptible service, the Commission is requiring a daily posting no later than the first nomination under an agreement for interruptible service. Any time a rate or other condition of the interruptible

[169] Natural Gas Pipeline Co. of America, 55 FERC ¶ 61,416 at 62,245–46 (1991); and El Paso Natural Gas Co., 57 FERC ¶ 61,273 at 61,881–82 (1991) (permitting negotiated gas sales rates to remain confidential from unregulated competitors in the context of gas inventory charge settlements).

[170] Requests for Rehearing of Cibola, Dynegy, NEMA, Koch, INGAA and Enron.

[171] GISB Capacity Release Standard 5.3.2 (GISB Version 1.3, July 31, 1998).

[172] 15 U.S.C. 717(c)

agreement changes the pipeline must post the change.

With these changes, the Commission will have achieved comparability between the reporting requirements for pipeline transactions and the reporting requirements for capacity release transactions, as INGAA and Enron request. The Commission is requiring the transactional reports for pipeline firm and interruptible transactions and capacity release transactions to be posted according to the same time frame previously used for capacity release service—no later than the first nomination for service.

Postponing the time for posting of firm contracts may result in somewhat later disclosure of some contractual commitments. But the effects of such a delay on shippers' ability to obtain information about available capacity will be mitigated by other reporting requirements. Under section 284.13 (d), the pipeline is required to post all available firm capacity on its system. Once the pipeline enters into a contract committing firm capacity, the pipeline must amend its posting to reflect the fact that this capacity is no longer available, even if it does not immediately disclose who the purchaser is. On balance, the Commission finds that requiring posting no later than the first nomination under the change is more consistent with its general reporting requirements, creates parity between pipeline and capacity release transactions, and will still provide the Commission and the public with sufficient information about firm pipeline contracts and capacity release transactions.

Finally, the Commission will not impose a later posting deadline for the transactional information, as some rehearing requesters have urged. First, posting no later than the deadline for service nominations is more consistent with the Commission's general regulatory scheme, as discussed above. And second, the transactional information is necessary for timely, informed decisionmaking; therefore, delaying the posting of the transactional report until after service commenced would limit the value of the transactional information for its intended purpose of current decisionmaking.

d. Consistency With Prior Policy. Columbia Gulf asserts that the new transactional reporting requirements reflect an unexplained change in Commission precedent and policy because the Commission previously concluded in Order No. 581 [173] that the same information now included in the transactional reports did not need to be included in the discount report and the Index of Customers. Columbia Gulf states that in Order No. 581 the Commission specifically found that it did not need to require pipelines to report the same level of transportation information that is posted for capacity release transactions in order to compare pipeline transactions with capacity release transactions because the benefit from such comparison would be outweighed by the risk of harm to pipelines and LDCs from the release of the commercially sensitive data. Columbia Gulf also states that in Order No. 581, the Commission determined that it could satisfy its obligations under the NGA without requiring the reporting of the additional information.

As Columbia Gulf points out, at the time of Order No. 581, in 1995, the Commission found that virtually the same transactional information (*e.g.* receipt and delivery points) did not need to be reported in the Index of Customers and discount report, because the risk of harm from the release of the information outweighed the benefit that would be obtained from the proposed use of the information. In Order No. 637, the Commission has changed its policy focus and reporting objectives from those that existed at the time of Order No. 581, and as a result, now strikes the balance differently.

One of the primary goals of the Order No. 581 rulemaking was to simplify and streamline the Commission's reporting requirements and to reduce the reporting burden on pipelines. The reporting requirements had not been updated in the ten years after the issuance of Order No. 436 in 1985, and contained numerous outdated and unnecessary provisions. Also, Order No. 581 was issued at a time when pipelines filed rate cases more frequently than they do today. The Commission's focus at the time was directed toward accumulating a large amount of information through rate case filings. Thus, the Commission determined in Order No. 581 that the inclusion of the additional information in the discount report and Index of Customers was unnecessary to further the Commission's existing regulatory policies.

However, the regulatory context of the Commission is now different than it was at the time of Order No. 581, and thus, requires different information to be reported. The Commission's waiver of the rate cap for capacity release transactions now necessitates that additional transactional information must be reported for the new purposes of facilitating informed decisionmaking and effective market monitoring. The additional information is especially necessary because pipelines now file rate cases only sporadically, if at all.

Tellingly, part of the language of Order No. 581–A relied upon and cited by Columbia Gulf, makes clear that the Commission's consideration at that time of whether to supplement the existing reporting requirements with additional information was based on industry conditions at the time: ''The Commission found [in Order No. 581] that many items, such as the receipt and delivery points, extended beyond that which the Commission needs to receive from pipelines on a regular basis to regulate the natural gas industry *today.*'' [174] In short, in the year 2000, the Commission has reconsidered its reporting needs and determined that better information is now needed both to promote a competitive market and to promote effective monitoring of that market.

e. Burden. Columbia Gulf argues that the transactional reporting requirements impose an undue burden on interstate pipelines. Columbia Gulf disagrees with the Commission's statement in the Final Rule that the amount of new information is ''not an extensive amount of information compared to what is already provided.'' [175] It maintains that six new categories of information is a significant burden given that the preexisting Index of Customers required only five categories of information, and the discount report, only four categories. Columbia Gulf further asserts that the inclusion of receipt and delivery points or zones or segments in which capacity is held under contract creates an undue administrative burden on pipelines because many contracts contain multiple receipt and delivery points, which combine to create many transportation paths.

Williams and Williston Basin, also, argue that the posting of transactional information will be burdensome. Williams alleges that contrary to the Commission's finding, for some information such as the affiliate relationship between releasing and

[173] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 Fed. Reg. 53019 (October 11, 1995), III FERC Stats. & Regs. ¶ 31,026 (1995).

[174] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 61 Fed. Reg. 8860 (March 6, 1996), III FERC Stats. & Regs. ¶ 31,032 at 31,551 (1996) (emphasis added).

[175] Order No. 637, 65 FR at 10207, III FERC Stats. & Regs. Regulations Preambles ¶ 30,091, at 31,326.

replacement shippers and special details pertaining to a pipeline transportation contract, it is not just a simple matter of developing a method of displaying the data, because either the data are not routinely maintained, or are maintained manually. Williston Basin maintains that the Commission is wrong that it will not be difficult for pipelines to adapt their already existing capacity release data sets to apply to pipeline transactions. Williston Basin asserts that its capacity release data sets are not readily adaptable, but will involve extensive programming that will be an expensive and onerous task.

The new transactional reporting requirements will impose some additional burden on pipelines. While Columbia Gulf is correct that the Commission is creating new categories of information, the new information is already collected, in one form or another, by the pipeline. All of it is information that the pipeline already has in its possession, and thus, the transactional reporting requirements do not impose an additional burden on the pipelines to collect information.

Although the Commission acknowledges that the task of creating new formats for displaying the information on the pipelines' Internet web sites will be involved for some pipelines, nevertheless, it is a one-time reprogramming burden that, once completed, will enable the required data to be posted automatically. As such, the level of posting burden should not vary with the quantity of data to be posted under each data element. The Commission finds that the benefits achieved from the ongoing disclosure of the transactional information far outweigh the one-time burden of establishing the electronic reporting formats.

In addition, the interruptible transaction reporting burden should not be excessively burdensome because the Commission did not require actual transactional data to be posted daily, such as the quantity actually shipped and the receipt and delivery points actually used. The rate for interruptible service is a volumetric rate, under which a shipper may or may not ship at all. Thus, as explained more fully in the next section below, the Commission in Order No. 637 required that pipelines post only the quantity the shipper is entitled to ship, and not the amount actually flowing each time service is nominated under the interruptible service agreement. Therefore, a transaction for interruptible service on a monthly basis could be initially posted, and assuming it was not changed, could remain posted for the month without needing to be reposted on a daily basis.

f. Miscellaneous Requests for Rehearing and Clarification.

Transactional Reports for Interruptible Services: The report for interruptible transactions established by Order No. 637 requires pipelines to post on a daily basis, among other things, ''the quantity of gas the shipper is entitled to transport,'' and ''the receipt and delivery points and zones or segments covered by the contract over which the shipper is entitled to transport gas.'' [176] Great Lakes requests the Commission to require the new interruptible reporting requirements to provide for the reporting of actual service data, rather than the contractual quantities and points agreed to by the pipeline.

Great Lakes argues that the contractual data Order No. 637 requires will not provide the current pricing information that the Commission has determined shippers need. Great Lakes states that on the discount report, pipelines were only required to report discounts that were actually assessed a shipper for interruptible transportation service, and were not required to report discounts that were agreed to by the pipeline, but never utilized by the shipper. Great Lakes also argues that because interruptible contracts often list all points on the system as primary points available for interruptible service nominations by the shipper, it is not clear what maximum or charged rate to reflect on the pipeline's report. It further states that only those points where interruptible service is available on the system on a given day are actually available to that interruptible shipper.

The Commission's requirements for posting information about interruptible transactions are designed to provide information similar to that provided for firm service. For firm service, the Commission is requiring the posting of the rate the shipper pays, the volumes the shipper is eligible to ship under the contract, and the points included in the contract. The Commission is not requiring that pipelines provide actual quantities shipped or points used on a daily basis for firm transactions.

Interruptible service, by nature, is different than firm service, and the process of arranging interruptible service transactions differs from firm contracting. Interruptible shippers do not sign contracts with specific contract demand limitations, as firm shippers do. Interruptible customers frequently sign *pro forma* or master contracts with the pipelines that do not specify a rate or that permit the interruptible rate to vary and that lists all receipt and delivery points on the system. The pipeline and the shipper may then reach agreement on a monthly or daily basis as to the rate to be paid for the month and the quantity and receipt or delivery points to which that rate applies.[177] For instance, the pipeline and shipper may reach agreement that for a discount rate of $0.50/Dth the shipper can nominate up to 10,000 Dth/day between certain receipt and delivery points.

In order to create parity between the reports for firm and interruptible service, the Commission, therefore, is requiring that, for interruptible service, pipelines post on a daily basis prior to the first nomination under such an agreement, the rate the interruptible shipper is being charged, the quantities the shipper is eligible to ship, or the pipeline is willing to ship, at that rate and the receipt or delivery points between which the rate is applicable. It is the terms of the subsidiary agreement between the pipeline and the shipper, not the master contract that must be posted. Under this approach, the pipeline could post the interruptible agreement on the first of the month and simply leave that posting as long as the rate or other aspects of the agreement have not changed. But once those agreements have changed, the pipeline would have to repost the transaction.

Because the Commission is not requiring the posting of daily throughput for firm service, it has determined not to require daily posting of throughput for interruptible service. The information required under this regulation will be sufficient to enable the Commission and shippers to monitor interruptible transactions. Pipelines will be required to post interruptible transactions whenever a rate or volume commitment changes, and other shippers can use such information to determine whether there has been undue discrimination in the awarding of interruptible service.

The Commission further is revising the interruptible reporting requirements to eliminate confusion over precisely what points or rates are to be reflected on the posting. The regulation now reads ''the receipt and delivery points and zones or segments covered by the contract over which the shipper is entitled to transport gas.'' This language implies that the receipt or delivery points should be those in the master contract, rather than the points in the

[176] 18 CFR 284.13(b)(2)(iv) and (v).

[177] Many pipelines, for example, allocate interruptible capacity based on rate paid and allow interruptible shippers to increase their rate in order to obtain a greater allocation of interruptible service.

subsequent agreement to provide interruptible service. Section 284.13(b)(2)(iv) will be revised to require the posting of the receipt and delivery points over which the shipper is entitled to transport gas at the rate charged to make clear that the pipeline should post the receipt and delivery points in each individual agreement to provide interruptible service, not simply the receipt and delivery points in the master contract. It may be that some interruptible agreements permit shipment using all receipt or delivery points on the pipeline system and that is the information that should be posted. In other cases, however, interruptible transportation at a particular rate may be limited to certain receipt and delivery points in which case the posting should only include the limited points in the agreement.

Scope of the Transactional Reporting Obligation: Cibola requests clarification that the transactional reporting requirements do not apply to existing pipeline capacity transactions that have remaining terms of one year or more.[178] Cibola argues that requiring public disclosure of the price and terms of transactions negotiated at various times in the past will not serve the Commission's price transparency goals. Cibola further argues that requiring the details of existing long-term transactions to be posted will fundamentally alter the business and competitive risks that the parties understood they would face when they initially entered into the transactions.

The Commission agrees with Cibola that requiring the posting of pre-existing pipeline and capacity release transactions in the transactional reports is unnecessary, and was not the Commission's intent in Order No. 637. The transactional reporting requirement, both for pipeline and capacity release transactions, is prospective only as of the September 1, 2000 implementation date. The Commission clarifies that for all new firm contracts that are executed after September 1, 2000, and existing contracts that are revised after that date, and for interruptible transactions taking place after that date, pipelines are required to post a transactional report no later than the first nomination for service under the new or revised contract. This is consistent with the Commission's regulation requiring that transactional reports only be posted for 90 days at which point the information is archived for a three year period and made available upon request.[179]

Historical information on pipeline transactions and capacity release transactions is available through other reporting requirements. The Index of Customers provides information about existing pipeline contracts. As discussed above, historical capacity release transactions have already been posted, and the posted information is required to be made available by the pipeline.

Enron requests that the Commission clarify that the requirement that the pipeline post transactional information for revised contracts does not extend to shipper-initiated primary receipt and delivery point revisions within an effective contract.[180] Enron asserts that requiring a new posting for each point change is redundant with other reports and will clutter the web sites.

In the Commission's view, posting of primary receipt and delivery point changes is necessary so that other shippers can monitor those changes for undue preference or discrimination. Thus, the Commission will not change the requirement that amended contracts be posted.

Enron also argues that pipelines should not be required to post contracts during a pending certificate proceeding, but only for capacity that is in service.[181] Enron argues that the Commission already has established practices for requiring the disclosure of contracts in the certificate process, and that there is no benefit from requiring expansion contracts to be included in the firm transactional reports.

The Commission will not exempt expansion contracts from the transactional reporting requirement. However, since the Commission has revised the requirement that the transactional information be posted contemporaneously with contract execution to requiring posting no later than the first nomination for service, the reporting of expansion contracts should not be problematic.

Modifications to Transactional Reporting Data Elements: Kinder-Morgan requests the Commission to delete the requirement that pipelines report the contract number of each transportation transaction. Kinder-Morgan states that the contact number enables the shipper to gain access to the pipeline's system for the purpose of making nominations, raising the prospect that one party could submit nominations using the contract number of another shipper, and thereby obtain transportation using someone else's capacity. The solution here is not for the Commission to eliminate the contract number, which is necessary for analytic purposes, but for the pipelines to establish computer security measures, such as the use of PINs or some other security features to protect their internal computer systems.

Amoco requests the Commission to make three revisions to the regulatory text of section 284.13(b)(1) and (2). First, Amoco requests section 284.13(b)(1)(iii), referencing the rate charged under each contract, to be revised to state ''the rate charged under the contract and whether the rate is a negotiated rate.''[182] Amoco maintains that the purpose of its proposed change is to put all parties on notice in future rate cases as to whether the pipeline can seek a discount adjustment regarding the transaction. Section 284.13(b)(1)(viii) requires the posting of, ''special terms and conditions applicable to a capacity release and special details pertaining to a pipeline transportation contract.'' To clarify that negotiated rates must be disclosed, the Commission is revising the regulation to include a requirement that the pipeline disclose whether the contract is a negotiated rate. Negotiated rates also will be identified in the Index of Customers.

The second change Amoco requests is that the phrase ''special terms and conditions'' in section 284.13(b)(1)(iii) be revised to read ''special terms and conditions, including all aspects in which the contract deviates from the pipeline's tariff,'' so that it will not be up to the reporting entity to decide what constitutes a special term or condition.[183] The Commission agrees that including such a change will identify any transactions that deviate from the pipeline's tariff and will revise sections 284.13(b)(1)(vii) and 284.13(b)(2)(6) to require the disclosure of all aspects in which agreements deviate from the pipeline's tariff.

Amoco's third request is to modify the language, ''special details pertaining to a pipeline transportation contract'' in section 284.13(b)(1)(viii) and the similar language in section 284.13(b)(2) governing interruptible transactional reporting, by adding the following explanatory language from the preamble of Order No. 637 to the regulatory text to eliminate any confusion: ''Under this requirement, a pipeline must report any special conditions attached to a discounted transportation contract, such as requirements for volume

[178] Request for Rehearing of Cibola at 5–7.

[179] 18 CFR 284.13(b) (90 day posting); 18 CFR 284.12(c)(3)(v) (three year archiving requirement); 18 CFR 284.12(b)(v) (Capacity Release Standard 5.3.20 provides that historical data be made available within the Commission's archival periods).

[180] Request for Rehearing of Enron at 8–9.

[181] *Id.* at 9.

[182] Request for Rehearing of Amoco at 62.

[183] *Id.*

commitments to obtain the discount.'' [184] Also, Koch requests the phrase to be limited to terms and conditions from negotiated rates contracts that are already filed with the Commission, but have not been made available by other means.

The Commission agrees with Amoco that additional clarification is worthwhile and will add the following language to the requirements to post special details pertaining to the contract, ''including conditions attached to a discounted transportation contract,'' to provide additional clarification. However, there may be other special details pertaining to the contract that would need to be posted as well. Thus, the Commission denies Koch's request to limit the special details reported to terms and conditions from negotiated rate contracts. The Commission seeks more than just conditions attached to negotiated rates contracts. For instance, a key purpose of this data element is to obtain discount conditions, and thereby correct a deficiency in the existing discount report.

Requests for Additional Data and Filing Requirements: IPAA requests the Commission to require pipelines to submit and post in addition to the data required under the new reporting requirements, information regarding the capacity actually used in each capacity release transaction. IPAA argues that for prearranged capacity release transactions to be completely transparent, shippers need enough information to determine whether even after a nomination and confirmation is made any gas actually moved. IPAA also requests that the Commission impose a transactional reporting requirement on capacity holders comparable to the pipeline's transactional reporting obligation, that would also include nominations, confirmations, and actual capacity used. IPAA asserts that the Commission must have adequate information to ensure that any available capacity is both offered and used.

The Commission does not find it necessary to report the quantity of gas moved on a daily basis under firm pipeline contracts or capacity release contracts. The Commission did not previously require detailed information about quantities nominated for capacity release transactions and it is not evident why such information is necessary to effectively monitor such transactions for undue discrimination. The information that is most important for monitoring is the rate and contract conditions upon which the shipper acquired the capacity, not whether the shipper decided to use it on a particular day. Shippers may frequently acquire capacity, but, depending on weather and other conditions, determine that they do not need to use some or all of that capacity everyday. Their decision not to use capacity they have acquired does not necessarily indicate anticompetitive activity. Given the limited value of such information, the added burden of requiring the posting is not warranted.

In addition, the Commission sees no basis for imposing a reporting obligation on capacity holders similar to the pipelines' transactional reporting requirement. Such information would largely duplicate the capacity release information that the pipelines are required to submit under the new transactional reporting requirements.

Amoco requests the Commission to require pipelines to make a simultaneous electronic filing with the Commission when they post the data on their Internet web sites. Amoco argues that this is consistent with the filing requirements of section 4(d) of the NGA, and will encourage the filing of accurate data. The Commission finds it unnecessary to require a simultaneous electronic filing with the Commission. As discussed earlier, the NGA gives the Commission discretion in determining the timing and manner for filing and notice, and the Commission has determined that the requirements of section 4 for public dissemination of rates and terms and conditions are better met by the posting of the rates and other transactional data on pipeline Internet web sites than by the filing and maintenance of the information by the Commission. Simultaneous electronic filing with the Commission is not necessary for the Commission to obtain the information it requires to monitor the market, since the Commission can download the files from the Internet postings and the pipeline's are required to maintain records of such information that the Commission may obtain if necessary.[185]

Amoco also requests certain changes to the annual Form 2 reporting. The Commission did not provide notice to the industry that Form 2 could potentially be revised. As a result, modifications to the Form 2 go beyond the scope of this rulemaking proceeding.

As stated in Order No. 637, the Commission is committed to reviewing all of its reporting requirements on an on-going basis and as part of its dialog with the industry. While the Commission cannot now see the need to expand the reporting requirements, as those requesting rehearing suggest, the Commission will be able to evaluate whether such additional information is needed as the Commission staff and the industry work with and review the information received under the current requirements.

B. Information on Market Structure

In Order No. 637 the Commission explained that information on market structure enables the Commission to know who holds or controls capacity on each portion of the pipeline system, so potential sources of capacity can be identified, and shippers and the Commission can monitor for undue discrimination or preference. To give shippers a more useful picture of market structure, Order No. 637 expanded two of the Commission's pre-existing reporting requirements that provided information on market structure—the Index of Customers and the affiliate regulations.

1. Index of Customers

Prior to Order No. 637, section 284.106(c)(3) of the regulations required pipelines to file an Index of Customers with the Commission, on the first business day of each calendar quarter, and to post the Index on their Internet web sites. The Index provides the names of shippers holding firm capacity, the amount of capacity held, the applicable rate schedule, and the contract effective and expiration dates. Order No. 637 added the following new information requirements to the existing Index of Customers: the receipt and delivery points held under the contract and the zones or segments in which the capacity is held; the common transaction point codes; the contract number; a shipper identification number, such as DUNS; an indication whether the contract includes negotiated rates; the names of any agents or asset managers that control capacity in a pipeline rate zone; and any affiliate relationship between the pipeline and the holder of capacity.

Amoco requests the Commission also to require the rate charged and the maximum contract rate to be included in the Index of Customers. Amoco argues that such information is relevant not only for the purposes of the daily transactional report, but also for the purpose of the Index of Customers.

The Commission disagrees, and will not add the maximum contract rate and actual rate charged to the Index of Customers. The purpose of the Index of Customers is to reveal the structure, or make-up, of the market for transportation capacity on a periodic

[184] *Id.*

[185] 18 CFR 284.12(c)(3)(v) (3 year archiving requirement); 18 CFR 250.16(d) (3 year requirement for maintaining discount information).

basis, to enable the Commission to assess the degree of competition on a pipeline or pipeline segments, and to detect potentially anticompetitive market dominance. Essentially, the Index of Customers shows who holds capacity on given pipeline, how much capacity is held by each shipper, where the capacity is held, the total amount of capacity held by a parent entity, and whether and the degree to which a pipeline's capacity is controlled by another entity, such as an asset manager. Price information is not directly relevant to the reason for requiring the index: to determine who and how much capacity shippers hold on the pipeline. Moreover, the rate charged and maximum contract rate are already obtained through the transactional reports.

2. Affiliate Regulations

In Order No. 637, the Commission expanded its affiliate regulations to permit monitoring and self-policing of affiliate transactions. The Commission revised section 161.3(l) of the standards of conduct for interstate pipelines specifically to require pipelines with marketing affiliates or sales operating units to post certain information concerning their affiliates on their Internet web sites, and to update the information within three business days of any change. Under new section 161.3(l)(2), pipelines must post, and update within three business days of any change, a complete list of the names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate,[186] and comprehensive organizational charts showing several different types of information.

First, the organizational charts must show the organizational structure of the parent corporation and the relative position within the corporate structure of the pipeline and all marketing affiliates.[187]

Second, the organizational charts must show business units, job titles, job descriptions, and chain of command for all positions within the pipeline, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, duties, and an indication whether the employee is involved in transportation or gas sales. In addition, the pipeline must also include the names of supervisory employees who manage non-clerical employees involved in transportation or gas sales.[188]

Third, the organizational charts must indicate, for all employees shared by the pipeline and a marketing affiliate, the business unit or sub-unit within the marketing affiliate organizational structure in which the shared employee is located, the employee's name, the employee's job title, and job description within the marketing affiliate, and the employee's position within the chain of command of the marketing affiliate.[189]

Tejas seeks rehearing of the requirement for pipelines to post and update organizational charts showing the organizational structure of the parent corporation and the relative position within the corporate structure of the pipeline and all marketing affiliates, under section 161.3(l)(2)(ii)(A), and the business units, job titles, job descriptions, and chain of command for all positions within the pipeline, under section 161.3(l)(2)(ii)(B).[190] Tejas argues the Commission has not demonstrated that such information is needed to deter undue discrimination and preference and to help the market monitor affiliate transactions. Tejas maintains that these reporting requirements will simply clutter pipeline web sites with voluminous, irrelevant information, and will create a substantial posting and updating burden, especially for small pipelines such as Tejas.

Posting detailed organizational charts will provide shippers and the Commission with current information regarding whether pipeline personnel are separated from marketing affiliate personnel to the maximum extent practicable. Posting such information allows shippers and the Commission to monitor whether employees with access to transportation and/or non-affiliated shipper information are shared with the pipeline's marketing affiliate(s).

The Commission finds the posting of such information to be important. The requirements adopted here are similar to those adopted with respect to electric marketers and are necessary to permit monitoring of affiliate relationships. The Commission's pre-existing requirement in section 250.16(b)(1), that a pipeline maintain in its tariff a complete list of shared operating personnel and facilities, and update that list on a quarterly basis, has not been completely effective in achieving pipelines' complete disclosure of shared operating employees. Pipelines have not always disclosed the sharing of operating employees with their marketing affiliates.[191] For example, in *Kinder Morgan,* the pipeline admitted that it had not disclosed that it shared operating employees with its marketing affiliates.[192] Posting of organizational information, including job descriptions and the chain of command, will deter undue discrimination because such information permits shippers to know which employees are involved in pipeline transportation functions and have access to their commercially sensitive information. Such transparency will serve to counter the economic incentive to share information between pipelines and their marketing affiliates.[193] Moreover, the posting requirements are not onerous. The posting requirements do not apply to clerical, maintenance, and field employees because these employees would not receive information concerning the processing or administration of requests for transportation service.

Tejas argues that posting organizational charts will ''clutter'' its web site with voluminous and irrelevant information. However, electric utilities have been subject to similar posting requirements since 1997, and their web sites, for the most part, appear to be well organized and uncluttered. This appears to be an issue of web site design rather than substantive policy.

Williams requests the Commission to eliminate the organizational charts for the pipeline under section 161.3(l)(2)(ii)(B), while INGAA requests the Commission to modify that section to require pipelines to post just the title and function of non-shared employees, rather than detailed job descriptions and the employees' names. Williams and INGAA argue that the fact that the Commission has adopted a similar requirement for electric utilities is inadequate justification for imposing this reporting burden on pipelines because there are distinct and fundamental differences between the two types of utilities. They assert that pipelines do not provide a commodity

[186] 18 CFR 161(l)(2)(i).

[187] 18 CFR 161.3(l)(2)(ii)(A).

[188] 18 CFR 161.3(l)(2)(ii)(B).

[189] 18 CFR 161.3(l)(2)(ii)(C).

[190] Request for Rehearing of Tejas at 6–8. Tejas does not seek rehearing of the new posting requirements applicable to employees shared by a pipeline and a marketing affiliate in section 161.3(l)(2)(ii)(C).

[191] Kinder Morgan Interstate Gas Transmission LLC, et al., 90 FERC ¶ 61,310 (March 29, 2000) (*Kinder Morgan*) and *Amoco* v. *Natural Gas Pipeline Company of America,* 82 FERC ¶ 61,038 (1998); *reh'g denied,* 82 FERC ¶ 61,300 (1998); and *reh'g granted, in part,* 83 FERC ¶ 61,197 (1999).

[192] 90 FERC ¶ 61,310 at 62,009. Although *Kinder Morgan* concerned a settlement, the pipeline stipulated to certain facts concerning the pipeline's relations with its marketing affiliates. *See* Settlement Agreement at 6–7.

[193] *Tenneco Gas Company* v. *FERC,* 969 F.2d 1187 at 1205 (1992).

sales service similar to electric retail service, and that pipeline operations are not intertwined between a wholesale transmission service and a retail commodity service. INGAA argues that the differences between completely unbundled natural gas pipelines and vertically integrated electric utilities suggest that details about non-shared employees are unnecessary in the natural gas pipeline industry, and that, therefore, pipelines ought to be subject to less stringent reporting of non-shared employees and facilities. Williams further argues that unlike the information in paragraphs A and C of section 161.3(l)(2)(ii), the information in paragraph B does not relate to both the pipeline and its marketing affiliate, but is related solely to the pipeline.

Although it is true there is more vertical integration among electric utilities than among natural gas pipelines, it is also true that most pipelines continue to have marketing affiliates that are involved in transportation transactions on the pipelines' system. For this reason, it is important to require information to be reported on all non-clerical employees, whether shared or non-shared, so the Commission can better monitor for affiliate preferences by making its own independent determination which employees are shared and which are not shared. The posting requirements will also allow shippers to identify by name (with respect to supervisors) and job description those who have access to transportation information, enabling them to determine whether pipelines have accurately revealed shared transportation employees.

Accordingly, the posting requirements help shippers and the Commission to monitor and detect anticompetitive abuses.[194] The potential for such anticompetitive abuse continues whenever a pipeline conducts transportation transactions with its marketing affiliate(s). With the elimination of the capacity release price cap, it is especially important for the Commission to be vigilant to dealings between pipelines and their affiliates.

In addition, a number of pipelines argue that the Commission should eliminate the requirement that pipelines update the information required to be posted by section 161.3(l) within three business days of any change.[195] They assert that because growing corporations in today's business world are in constant states of evolution, three days is an inadequate amount of time in which to update the postings of the extensive and ever-changing information that is now required. They argue that the three-day updating requirement could result in daily updating, and thus, become unduly burdensome, and would be a waste of resources. CNGT and Enron add that the comparable requirements for the electric industry do not include this three-day updating requirement. Additionally, Enron urges that the updating of the information within three days of changes is an unreasonable time frame because information on corporate organizational changes is often kept confidential until employees are briefed, and once the changes are public, memoranda documenting and implementing the changes take additional time.

All of the pipelines raising this issue request that the Commission instead require the affiliate information to be updated on the first business day of each quarter. Further, CNGT and INGAA argue that if the three-day updating requirement is retained, it should be limited to the information concerning shared operating employees under section 161.3(l)(2)(ii)(C), while the information on non-shared employees required in section 161.3(l)(2)(ii)(B) should be updated quarterly.

The Commission has decided not to alter the requirement to post changes to the posted affiliate information within three business days of the change. In order to provide accurate information regarding a pipeline's management and organization for purposes of monitoring pipelines' compliance with the standards of conduct, it is essential for such information to be current. For this reason, a quarterly updating of affiliate information is inadequate.

In the Commission's view, the three-day updating requirement is not burdensome or unreasonable. In fact, the requirement to post changes three business days after they occur is less strict than the requirement for electric utilities to post changes ''as changes occur.'' [196] Enron's argument that the three-day posting requirement is burdensome was first considered and rejected in *Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet* [197] with regard to posting the names and addresses of marketing affiliates in existing section 161.3(l) (now section 161.3(l)(1)). In that order, the Commission agreed with Enron that the pace of markets today is brisk. However, the Commission noted that because of the dynamic nature of markets, unduly discriminatory actions must be corrected quickly if the correction is to be meaningful.[198]

Moreover, a pipeline must consider the application of the standards of conduct to a proposed organizational change before it makes such changes. Posting information regarding the transfer three days after such organizational changes have occurred is a ministerial act. However, in response to Enron, the Commission will modify the language of section 161.3(l)(1) and (2) to require that pipelines update the information ''within three business days of any change taking effect.'' This will clarify that the Commission does not intend for pipelines to post changes prior to the effective date of the change.

C. Information on Available Capacity

In Order No. 637, the Commission expanded the requirement in existing section 284.8(b)(3) of the Commission's regulations for pipelines to report information on available capacity. Under that regulation, pipelines were required to post on their Internet web sites information about the amount of operationally available capacity at receipt and delivery points, on the mainline, in storage fields, and whether the capacity is available directly from the pipeline or through capacity release.[199] In new section 284.13(d)(1), the Commission continued to require pipelines to provide this information (via posting on the pipelines' Internet web sites), and added the following information on capacity availability to the information that was already collected: the total design capacity of each point or segment on the system; the amount of capacity scheduled at each point or segment on a daily basis; and information on planned and actual service outages that would reduce the amount of capacity available. The Commission required the information on available and scheduled capacity to be posted daily, and the information on design capacity to be posted one time (and thereafter maintained on the web site), and then updated as necessary.

[194] The Standards of Conduct and posting requirements only apply if the pipeline conducts transportation transactions with its marketing affiliate(s), including those in which a marketing affiliate is involved.

[195] *See* Requests for Rehearing of CNGT, Enron, INGAA, Williams, Williston Basin, and Koch.

[196] Allegheny Power Services Corp. *et al.,* 84 FERC ¶ 61,131 at 61,714 (1998).

[197] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, III FERC Stats. & Regs. Regulations Preambles ¶ 31,064 (July 30, 1998), 63 FR 43075 (Aug. 12, 1998).

[198] III FERC Stats. & Regs. Regulations Preambles ¶ 31,064 at 30,715.

[199] 18 CFR 284.8(b)(3); 18 CFR 284.10(b)(1)(iv), Electronic Delivery Mechanism Related Standards 4.3.6; 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.4.13.

Service outages must posted when required.

Enron requests the Commission to eliminate the requirement that pipelines post design capacity for each point or segment.[200] Enron argues that the development and maintenance of meaningful design numbers would require the investment of a large amount of resources, and that shippers would not gain any additional useful information that they do not already receive from the posting of operationally available capacity. Enron explains that because pipelines do not operate under static conditions, the capacity of a point depends not only on the meter capacity of the point, but also on the location of other points on a lateral, the pressures at which the lateral is being operated, and the location and direction of actual gas flows. Enron states that for these reasons, GISB recently considered and declined to add design capacity to the available capacity posting.

The Commission will not eliminate the requirement that pipelines post design capacity for each point or segment. Design capacity information for points and segments will provide shippers with a picture of capacity distribution on the pipeline when operated under design conditions, and will enable shippers to better understand the relationship between design, scheduled, and operationally available capacity. The Commission recognizes that design capacity may not be available at all times due to variable operating conditions. However, the reporting of this information will provide a useful benchmark from which to evaluate operationally available capacity. Further, the Commission clarifies that it will be sufficient for pipelines to post the point and segment capacity used for system design and peak operation studies; such information should be readily available to the pipeline. Pipelines are free, however, to explain in their postings of operationally available capacity under section 284.13(d) why design capacity may not be available.

NGSA requests clarification that all information regarding capacity usage that a pipeline has access to should be made publically available on a real-time basis, whenever feasible. In particular, NGSA requests that where operationally feasible, a pipeline should report on a real-time basis for each point on its system—especially for constraint or other critical points '' the design capacity (*i.e.,* total available capacity before subscriptions) for that point, the capacity actually scheduled for that point, and actual physical flows through the point.[201] NGSA argues that only with this information can shippers know how much of unused capacity is actually unused but subscribed capacity that can be taken back by firm capacity holders at either the second or third nomination cycles. At a minimum, asserts NGSA, the Commission should require that pipelines post available design and scheduled capacity not only after the normal or ''timely'' cycle (11:30 a.m. on the day before flow day), but also after the 6:00 p.m. evening cycle, and where operationally feasible, after the two intra-day cycles. NGSA maintains that reporting available capacity only after the normal cycle is of limited value because available capacity often changes substantially as a result of the evening cycle. Amoco, however, requests that the Commission require the posting of capacity information on an ongoing basis, as the data become available to the pipeline.

The current regulations require the posting of available and scheduled capacity on a daily basis. The Commission finds merit in the argument that shippers need to know the level of available and scheduled capacity before each of the four intraday nomination opportunities in order to respond to nomination opportunities during the gas day. Therefore, the Commission will grant rehearing, and revise section 284.13(d)(1) to require that pipelines post the available and scheduled capacity information when they provide scheduling information to their shippers. This will permit the shippers to use this information to help in planning their nominations for the next nomination opportunity. Since pipelines must compute these capacity figures in the normal course of scheduling service requests for the four daily nomination cycles, there should be little additional burden in posting the data. However, the Commission will not require actual flow data to be reported because the information on available and scheduled quantities would appear sufficient to show the usage of the system. Moreover, actual flow data will not be able to help shippers nominate because it would be reported after the fact, not before nominations.

In response to NGSA and Amoco regarding the reporting of data at constraint points and bottlenecks, the Commission clarifies that under section 284.13(d)(1), pipelines are required to post information on available capacity, total design capacity, and scheduled capacity at all points, which should reasonably provide such information with respect to constraint points and bottlenecks. Pipelines, though, do not need to identify which points are constrained. However, as stated above, the Commission is not requiring the reporting of actual flow data at any point, constrained or otherwise, and denies Amoco's and NGSA's request for such flow data.

C. Implementation

The Final Rule requires pipelines to implement the new data reporting requirements by September 1, 2000. The Commission recognized in the Final Rule that the industry, through the Gas Industry Standards Board (GISB), is in the process of developing and improving standards for providing currently required information both on pipeline web sites and through downloadable file formats, using Electronic Data Interchange ASCX12 (EDI) formats.[202] The Commission further recognized that GISB will need to develop standards for the new reporting requirements (including pipeline firm and interruptible transportation transactions, design capacity, constraint information, and scheduled capacity) both for the presentation of the information on pipeline web sites, and the provision of the information in Electronic Data Interchange ASCX12 (EDI) or ASCII file formats, but that it may not be possible for GISB to complete the process of standardization in time for the September 1, 2000 implementation date.

Therefore, while the Commission encouraged GISB to work toward completing the standardization process prior to September 1, 2000, the Commission required pipelines to provide the new reporting information in non-standardized formats in the event GISB was unable to develop the datasets in time for the September 1, 2000 implementation. However, the Commission did not require that pipelines develop individual EDI file formats for the information during the period when GISB is developing the standards. Rather, the Commission required that pipelines only post the information on their web sites and provide flat ASCII file downloads for the relevant information. Pipelines, though, must continue to post the capacity release data in the existing EDI formats.

[200] Request for Rehearing of Enron at 10.

[201] Amoco, also, requests that the Commission require pipelines to post data on available capacity, as well as flow data, at constraint points and bottlenecks on the mainline.

[202] *See* Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–I, 63 FR 53565, 53569–75 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067, at 30,737–46 (Sept. 29, 1998).

A number of rehearing requests ask that the Commission defer the September 1, 2000 implementation date until after GISB has completed the process of establishing uniform national standards for collecting and displaying both the existing and new reporting information, so that pipelines may comply with the new reporting requirements and the GISB standards at the same time.[203] They argue that deferring the implementation of the new reporting requirements to coincide with the implementation of the GISB standards will eliminate the duplicative effort that otherwise will be required to make pipeline-specific changes to comply with Order No. 637, and then more changes to comply with the industry-wide GISB standards. They assert that requiring compliance twice will be expensive and wasteful of resources. In addition, Coastal maintains that deferring the implementation date will result in more user-friendly data presentations than will the numerous individual pipeline presentations, in various formats, developed to comply with Order No. 637.

Thus, the rehearing requesters either argue that the Commission should defer the implementation of the Order No. 637 reporting requirements until GISB publishes the uniform standards, or delay implementation until compliance with the GISB standards is possible. Some argue that the Commission should defer the implementation date until four months after the GISB standards are adopted.[204] Still others suggest that implementation should be deferred until either GISB develops the standard formats, or if GISB is unable to do so, the Commission itself develops the uniform standards.[205] In addition, Williston Basin argues that the Commission either must extend the implementation date or not require the reporting requirements to be standardized.[206]

In Order No. 637, the Commission has not required pipelines to develop EDI file formats for the new reporting requirements prior to GISB's issuance of the reporting standards. However, the Commission will not defer the implementation date for the posting of the information on pipeline web sites until after GISB acts. The information in the new reporting requirements needs to be available to the Commission and the market by September 1, 2000, to enable the Commission and market participants to begin to receive information about pipeline services prior to the start of the winter heating season.

The Commission recognizes that standardization of the reporting requirements is important to the industry, and is important to the Commission, as well. However, GISB is a private organization that is not required to act in accordance with the Commission's timetables, and thus, may not act in time to meet the Commission's implementation deadline. The Commission has minimized the potential for duplicative costs by requiring only that the information be posted on Internet web sites and in downloadable files, but not requiring pipelines to provide the data in EDI format until GISB's standardization is complete. Should GISB be unable to complete the standards necessary for posting the information on Internet web sites before September 1, 2000, the potential costs to the pipelines of having to reformat that information should not be great, particularly since they will be able to use whatever standards GISB has developed by that time. In any event, the information being required is of sufficient importance for the industry and for Commission monitoring of the market that the need for the information outweighs the costs of having to make minor changes to pipeline web sites at a later date. The Commission, therefore, will not make the implementation date dependent on GISB's actions. The Commission, however, encourages pipelines to work expeditiously with GISB to finish developing the standards in advance of the time for implementation of the Order No. 637 reporting requirements, which will eliminate any potential for duplicative development costs.

Finally, Great Lakes requests that the Commission confirm that pipelines will be able to recover the substantial costs that will be incurred in complying with the expanded reporting requirements of Order No. 637 in their next section 4 rate case. The costs may be recoverable in a rate case if they meet the Commission's standards for cost recovery. The Commission cannot make a generic ruling on this issue, since it is not aware of the nature of the costs for which recovery may be sought. The issue of the recovery of Order No. 637 compliance costs, like any other expense item, is an issue that may be raised in each pipeline's subsequent rate case, and if so, will be decided there.

IV. Other Pipeline Service Offerings

A. The Right of First Refusal

In Order No. 637, the Commission retained the right of first refusal (ROFR)[207] with the five-year matching cap, but narrowed the scope of the right. The Commission changed its policy so that in the future the right of first refusal will apply only to maximum rate contracts for 12 or more consecutive months of service. Existing discounted contracts were grandfathered so that the ROFR will apply to current discounted contracts, but will not apply when the contracts are reexecuted unless they are at the maximum rate.

The Commission also indicated that the maximum rate that a shipper must meet when exercising its right of first refusal may be, in certain limited circumstances where an incremental rate exists on the system, a rate that is higher than the historic maximum rate. Further, the Commission decided that it would not enhance the right of first refusal by allowing it to be exercised for a geographic portion of the existing contract. The Commission, however, did not change its preexisting policy that the right of first refusal can be exercised by a shipper for a volumetric portion of its capacity. The Commission also clarified that the right of first refusal as provided by the Commission's regulations, is an exercise of the Commission's authority under section 7(b) of the NGA and is not dependent on the contract between the pipeline and the shipper.

A number of parties have requested rehearing of this portion of Order No. 637.[208] As discussed below, the Commission has concluded that generally the ROFR should be limited to maximum rate contracts for 12 or more consecutive months of service, but an exception to this rule is appropriate for certain seasonal contracts. Therefore, the Commission modifies Order No. 637 to provide that the ROFR will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for a full 12 months. The requests for rehearing on the other ROFR issues are denied for the reasons discussed below. The Commission also

[203] Coastal, CNGT, Enron, INGAA, Kinder-Morgan, Koch, Tejas, Williams, and Williston Basin.

[204] Request for Rehearing of Kinder Morgan at 39 and Request for Rehearing of Williams at 11.

[205] Request for Rehearing of Koch at 59 and Request for Rehearing of CNGT at 26. CNGT asserts that the Commission should establish a standardized format for the new reporting requirements by July 1, 2000, if the Commission expects pipelines to meet a September 1, 2000 deadline.

[206] Request for Rehearing of Williston Basin at 14–16.

[207] 18 CFR 284.221.

[208] Requests for rehearing on these issues were filed by AGA; APGA; Arkansas Gas Consumers; ConEd; Florida Cities; FPL Energy; Great Lakes; INGAA; Keyspan; Koch Gateway; Minnesota; New England Gas Distributors; NASUCA; National Fuel; Process Gas Consumers; Minnegasco; Texas Eastern; UGI Utilities; Washington Gas; The Williams Companies; and WDG.

clarifies Order No. 637 as provided below.

1. Contract Length

In Order No. 637, the Commission changed its policy so that in the future, the right of first refusal will apply only to maximum rate contracts for 12 or more consecutive months of service.[209] The Commission stated that it will be the term of the service, not the term of the contract, that will determine whether the right of first refusal will apply. The Commission reasoned that the purpose of the right of first refusal is to protect long-term captive customers, and that seasonal service is short-term service, even if the contract providing for the service is of a duration of more than a year. AGA, several LDCs [210] and the Minnesota Department of Commerce (Minnesota) seek rehearing on this issue.

These petitioners argue there is no record evidence to support the Commission's conclusion that all shippers taking partial year service have competitive options. They assert the fact that a contract is for less than a full year of service does not in itself imply that the customer has sufficient competitive alternatives. The petitioners maintain that the services provided under many of these contracts, often storage and related transportation, are available from the pipeline only for specific months,[211] and are not offered for a full year. For example, Keyspan states that its long-term contracts for seasonal service are not the product of negotiations in which the Keyspan companies were able to use leverage to avoid purchasing services on an annual basis. Instead, Keyspan asserts, the pipelines offered the services for limited periods of the year, and the Keyspan companies are dependent on these contracts to meet their peak demands.

In addition, Minnegasco complains that the Commission's ruling elevates the form of the contract above the substance and, as a result, there will be only one acceptable model of contracting in order for a captive customer to preserve its right of first refusal.[212] Minnegasco argues that this denies parties the contractual flexibility that is allegedly a benefit of open access.

These petitioners further argue that there is no legal justification for eliminating ROFR protection for multi-year seasonal contracts. Keyspan argues that there is nothing in section 7(b) of the NGA or the court's decision in *United Distribution Companies* v. *FERC (UDC)* [213] that permits the Commission to apply a different standard in considering the abandonment of critically needed seasonal contracts than would be applied to necessary year round contracts. New England asserts that Order No. 637 sets forth no record support for the conclusion that partial year shippers can rely on the market to protect them from the exercise of market power. New England argues that the Commission's decision is also procedurally defective because the NOPR did not contain such a proposal, and therefore interested parties did not have an opportunity to comment on the issue.

These petitioners ask the Commission to modify or clarify its ruling and provide protection for pipeline customers that have multi-year contracts for pipeline service offered for less than 12 months. AGA asks the Commission to clarify that service under rate schedules that only provide partial-year service at maximum rates have ROFR protection. Minnesota also asks the Commission to allow the ROFR to apply to multi-year seasonal contracts for shippers currently paying rates that reflect the full cost of service.[214]

The Commission will grant the clarification requested by the petitioners, and provide that the ROFR will apply to multi-year seasonal contracts at the maximum rate for services not offered by the pipeline for a full 12 months. This is consistent with the purpose of the ROFR to protect long-term captive customers at the expiration of their contracts. If a customer is paying the maximum rate under a multi-year contract for a service that is offered by the pipeline on a seasonal basis only then, as the petitioners have pointed out, it is the pipeline that has determined the duration of the service. The shipper needing the service has no alternative but to accept what the pipeline offers. In addition, the LDC petitioners state that these multi-year winter-only contracts provide firm transportation service, often from storage, at critical times during the heating season. The LDCs generally have no pipeline alternatives to this service and this service is necessary to enable them to meet their service obligations. Thus, the contracts are similar to long-term contracts because the customers contract for this peaking service over a number of years, and the customers do not have significant alternatives to these pipeline contracts. They are not similar to the typical short-term contract where the shipper is not a captive customer, has other service options, and is not subject to the pipeline's market power. In these circumstances the customer relying on the service and paying the maximum rate should have the protection of the ROFR. Long-term maximum rate contracts with increased CDs for seasons of peak demand meet the standards for ROFR protection and therefore are covered by the ROFR.

2. Discounted Contracts

In Order No. 637, the Commission narrowed the scope of the ROFR to apply only to maximum rate contracts. The Commission explained that limiting the ROFR to maximum rate contracts is consistent with the original purpose of the ROFR to protect long-term captive customers from the pipeline's monopoly power. The Commission reasoned that if a customer is truly captive and has no alternatives for service, it is likely that the contract will be at the maximum rate. The Commission stated its intent that with this modification, captive customers will still be able to receive their historical service as long as they pay the maximum rate. However, the Commission also stated that if a customer has sufficient alternatives that it can negotiate a rate below the just and reasonable maximum tariff level, it should not have the protection afforded by the right of first refusal, and the pipeline should be able to negotiate with other interested shippers. The Commission grandfathered existing discounted contracts and provided that the ROFR will apply to these contracts, but will not apply to future contracts that are not at the maximum rate. The

[209] Order No. 637 at 216–18.

[210] *E.g.,* Keyspan Brooklyn Union, National Fuel, New England Gas Distributors, and Minnegasco.

[211] AGA gives several examples of such service, *e.g.,* Transco's Southern Expansion Service which is available only from November through March.

[212] Minnegasco gives several examples: if it has two contracts with a pipeline, one for 12 consecutive months of baseload capacity each year of the multi-year contract and a second agreement with that pipeline for 5 months of winter heating capacity for each heating season of the multi-year contract, it interprets Order No. 637 as stating that the contract for the heating season capacity would not have ROFR protection. If, on the other hand, it had one contract with the pipeline for 12 consecutive months of baseload capacity, but with increased capacity for the 5-month winter period, the contract would have ROFR protection. Also, Minnegasco states, if it had a contract with a different pipeline for the increased heating season capacity, that contract would not have ROFR protection. Minnegasco asserts that these differences are of form, not substance.

[213] 88 F.3d 1105 (D.C. Cir. 1996).

[214] Minnesota states that Northern Natural Company (Northern) supplies 89 percent of Minnesota's imported gas, and that the pipeline is capacity constrained. Minnesota also states that Northern Natural was given Commission approval to implement seasonal rates that are designed to reflect the full cost of service. Docket No. RP98–203. Minnesota states that the Commission's altered ROFR policy treats Minnesota shippers holding cost-based seasonal capacity on Northern differently from Minnesota shippers holding cost-based 12-month service. (Check this).

Commission found that limiting the ROFR to maximum rate contracts strikes the appropriate balance between the need to protect captive customers and the need to better balance the risks between the shipper and the pipeline.

APGA, National Fuel, Minnegasco, WDG, Process Gas Consumers, FPL Energy, Arkansas Gas, and Enron seek rehearing on this issue. These parties argue that limiting the ROFR to maximum rate contracts is contrary to section 7(b) of the NGA and challenge the factual basis for the limitation.

The limitation of the ROFR to maximum rate contracts as provided in Order No. 637 is fully consistent with the statutory requirements and the Commission's regulatory policies. Under section 4 of the NGA, a shipper is entitled to protection from unjust and unreasonable rates, and under section 7(b) of the NGA, a shipper is entitled to protection from the pipeline's exercise of monopoly power through the refusal of service at the end of the contract term. The Commission's rate regulation assures that the rates charged by the pipeline are just and reasonable, and the ROFR protects captive customer from an exercise of the pipeline's market power at contract termination. Contrary to the suggestions of the petitioners, limiting the application of the ROFR to maximum rate contracts does not dilute either of these protections. Captive customers are guaranteed confirmed service at the just and reasonable Commission-approved tariff rate. What is not guaranteed is service below the just and reasonable rate. The limitation is consistent with the Commission's goal of promoting competition while protecting captive customers from pipeline market power, and the Commission's need to balance financial risks between pipelines and shippers.

Several petitioners argue that the Commission's decision is contrary to section 7(b) of the NGA because section 7(b) does not state that only captive or maximum rate customers are entitled to protection, and the Commission in the past has emphasized that the ROFR is intended to protect all existing customers, not just some subcategory of them.[215] Process Gas Consumers assert that in Order No. 636–C, the Commission did not limit the ROFR to captive non-discounted shippers, and that the Court in *UDC* did not limit the ROFR to captive customers and did not indicate that ''captive'' means solely maximum rate non-discounted shippers.[216] Process Gas Consumers argue that the new limitation is unjustified.

Section 7 (b) is designed to ''protect gas customers from pipeline exercise of monopoly power through refusal of service at the end of a contract period.'' [217] The ROFR, by the terms of the regulation, is available to all shippers willing to pay the maximum rate and is not limited to captive customers. The Commission's regulation protects shippers from the exercise of market power in two ways: by capping the maximum rate the pipeline can charge and by giving shippers a ROFR at contract termination.

The petitioners also argue that the Commission's conclusion that a shipper that has been able to negotiate a discount with the pipeline is not a captive customer is erroneous. They assert that pipelines give discounts to customers, including captive customers, for a variety of reasons unrelated to competition. For example, these petitioners state that a discount may be given in consideration of entering into a settlement of a rate case or a complaint proceeding, for an agreement of the shipper to shift to a less desirable or underutilized receipt point, to sign a longer contract, or to take an additional volume.[218] In these circumstances, they assert, the fact that the shipper pays a discounted rate does not mean that it is not captive or that it has market alternatives for service. Further, Process Gas Consumers point to the Alternative Rates Policy Statement, under which the Commission requires a pipeline to show that its shippers have four or five ''good alternatives'' as one aspect of demonstrating that it lacks market power,[219] and argue that a discount from one pipeline is not the same as four or five good alternatives. WDG argues that absent a finding, on a customer-specific basis, that each shipper with a discounted contract has meaningful choices at the time of the contract termination, the Commission must continue to provide such shippers with the continued protection of the ROFR.

Further, several of the petitioners argue, because a discount or negotiated rate is determined at the outset of the contract, it has no relationship to the market that the long-term shipper faces at the end of the contract. They argue that the Commission provided no reason for equating market conditions at the outset of the contract with those at the end of the contract, and that conditions could change and affect the shippers' ability to obtain capacity at the end of the contract. The petitioners assert that the Commission must make certain that a captive customer will be afforded the assurance of continued service if the customer is willing to pay the maximum rate for the service in the future, regardless of whether the customer was able to negotiate a discount in the past.

These petitioners assert that the result of the Commission's ruling is that captive customers will be forced to forgo any opportunity for a discount, and will have to pay the maximum rate in order to retain a ROFR even if the market rate on a pipeline is lower than the maximum rate. Therefore, they argue, the Commission is guaranteeing that LDCs with a supplier of last resort obligation, or those that are physically connected to only specific pipelines, will not have an opportunity to obtain a contract at the market rate.

Although the petitioners assert that pipelines give discounts for a variety of reasons, generally, discounts are given to obtain or retain load that the pipeline could not transport at the maximum rate because of competition. The Commission has held that to the extent that a pipeline was required during the test period in a section 4 rate case to give discounts either to attract or retain load, the pipeline is not required to design its rates on the assumption that the discounted volumes would flow at maximum rates.[220] The Commission has explained that discounts given to meet competition benefit all customers by

[215] Process Gas Consumers cite Order No. 636 at 30,448.

[216] Process Gas Consumers cite a portion of the Court's decision where the Court states that ''even a captive customer served by a single pipeline can exercise its right of first refusal and retain its long-term firm transportation service against rival bidders.'' *UDC* at 1140. Process Gas Consumers state that the Court's use of the word ''even'' implies that the Court was not limiting the ROFR protection to captive customers.

[217] *AGA II,* 912 F.2d at 1518.

[218] The petitioners give other examples of situations where a captive customer may receive a discounted rate. For example, APGA states that a captive customer may be given a discount where the captive customer has a non-captive retail customer; Minnegasco states that a customer may be captive for 95 percent of its load and the pipeline may be willing to negotiate a discount to retain the entire load; WDG states that a pipeline may give a discount to a captive customer in response to a perceived competitive threat from the proposed construction of a new pipeline, and defeat the introduction of the new alternative. If the existing pipeline is successful in keeping the proposed alternative from entering the market, WDG argues, the captive customer whose last contract was at a discounted rate will still be a captive; Arkansas Gas states that captive customers may receive discounts as an incentive for an industrial customer to expand its facilities, as an incentive to take service at facilities with competitve options, or to assist industrial customers during times of financial troubles in order to keep the facility viable.

[219] Process Gas Consumers cite Alternative Rates Policy Statement at 61,235.

[220] *E.g.,* Koch Gateway Pipeline Co., 74 FERC ¶ 61,088 at 61,280 (1996).

allowing a pipeline to maximize its throughput and thus spread fixed cost recovery over more units of service.[221] Thus, the customers that receive discounts under the Commission's discount policy, are generally the customers whose business would have gone to another service provider unless the pipeline granted the discount, *i.e.,* customers with alternatives. If discounts are given for other reasons,[222] for example, if a discount is given for a short-haul, then it may be that the rate for the short-haul is not properly designed. If a rate for a service is too high, the shipper can file a complaint under section 5 of the NGA. The maximum approved rate for any service is a just and reasonable rate, and no customer is harmed by paying a just and reasonable rate.

Moreover, the ROFR's protection has always been related to the customer's payment of the maximum rate as a condition to exercising the ROFR. Pipelines are never required to discount their rates, and no customer is entitled to a discount. In finding that the ROFR afforded the necessary section 7(b) protection, the court in *UDC* stated, ''[i]f the existing customer is willing to pay the maximum approved rate, then the right of first refusal mechanism ensures that the pipeline may not abandon the certificated service.'' [223] The court also observed ''[t]he 7(b) abandonment provisions protect customers against loss of service only if the customer is willing to pay the maximum rate approved in a rate proceeding.[224] Since the ROFR was first created and reviewed by the court in *UDC,* what has changed is that pipelines have been granting more discounts to long-term firm shippers in circumstances never intended under the Commission's discount policy. Many of these rate adjustments should have been handled in other ways in section 4 or 5 rate cases.

Pipelines' rates are cost-based and are capped at a maximum just and reasonable level. No shipper is harmed by paying a just and reasonable rate for the service it receives. A shipper may, of course, negotiate with the pipeline for a discounted rate. However, if the shipper has the leverage, either through the availability of alternatives to the pipeline's service or for some other reason, to obtain a discount, it should compete with other shippers for the capacity without a preference.

Thus, the limitation of the ROFR to maximum rate contracts leaves in place the basic protections afforded by the statute—the shipper is guaranteed that it will pay no more than a just and reasonable rate for the service it receives, and if the shipper pays the maximum just and reasonable rate, it is guaranteed that it can retain that service at the end of its contract. The Commission's limitation of the ROFR to maximum rate contracts is consistent with the statute and the purpose of the ROFR.

Order No. 637 also states that because the ROFR will apply only to maximum rate contracts, there will be no ROFR for negotiated rate contracts. FPL Energy argues that the Commission erred in failing to consider the impact of this ruling on pipeline laterals, and that the Commission must make an exception for this type of service. FPL Energy states that it expects to take pipeline service across laterals built by the pipeline to its electric generating plant. FPL Energy states that once such a transportation arrangement is consummated, it will be exposed to the full market power of the pipeline to which it is connected, regardless of whether the Commission considers the rate to be negotiated.

New England does not object to denial of ROFR protection to customers paying a discounted rate, but asks the Commission to clarify that a negotiated rate shipper is denied ROFR protection only if the negotiated rate is less than the tariff maximum rate.

A negotiated rate is not the equivalent of the maximum tariff rate for the service, regardless of whether the negotiated rate is higher or lower than the maximum tariff rate, and therefore the ROFR will not apply to these contracts. The Commission permits negotiated rate contracts as an alternative to service under the Commission-approved generally applicable just and reasonable tariffs, but the regulatory right of first refusal does not apply to these negotiated contracts. Shippers who are able to negotiate a rate different than the maximum tariff rate generally have alternatives to service on the pipeline. However, in any event, if a shipper wants to have the benefits of the ROFR so as to have a preference for continued service on the pipeline over other customers at the expiration of its contract, it should take its service under the maximum just and reasonable tariff rate. If the shipper negotiates its rate, then it must compete equally with other shippers for the capacity at the end of its contract. In the example given by FPL, it is not likely that there would be any other shippers bidding for service over the lateral to its electric generating plant, and the pipeline is required to provide service at the maximum rate. The shipper is therefore protected in these circumstances.

FPL asks the Commission to define several terms including ''maximum rate,'' and ''negotiated rate,'' and specify what type of contracts fall within or without the revised ROFR's protection. ''Maximum rate'' refers to the maximum tariff rate for a particular service. A ''negotiated rate'' is a rate agreed to by the pipeline and a customer under the Commission's negotiated rate policy. As explained in Order No. 637 and as modified above, the ROFR will apply to maximum rate contracts for 12 or more consecutive months of service and to multi-year seasonal contracts for services offered by the pipeline only on a seasonal basis.

Enron argues that the Commission erred in grandfathering existing discounted contracts. Enron argues that it is unnecessary to allow these shippers to exercise their ROFR because the Commission has already concluded that these shippers are not the captive customers for which the right was created. Further, Enron argues that continuation of the right, even for just a few years, keeps the pipelines from putting the capacity in the hand of shippers that value it most.[225]

The Commission's determination that the ROFR should not apply to discounted contracts is a change from the Commission's past policy. Grandfathering current contracts executed by the parties with a regulatory right of first refusal is fair, and gives the parties notice of the new limitations on the ROFR prior to re-executing their contracts. It is within the Commission's discretion to apply this policy prospectively to contracts executed after the effective date of Order No. 637, and the Commission concludes that it is a reasonable balance to grandfather existing discounted long-term contracts.

Koch agrees with the determination in Order No. 637 that the ROFR should not

[221] *Id.*

[222] *See, e.g.,* Williston Basin Interstate Pipeline Co., 85 FERC ¶ 61,247 (1998); Southern Natural Gas Co., 67 FERC ¶ 61,155 at 61,456 n.8 (1994).

[223] *UDC,* 88 F.3d at 1140.

[224] *Id.* at 1142.

[225] Enron states that pipelines with current long-term discounted contracts cannot sell the long-term capacity they expect to become available, but must stand ready to continue serving the existing shippers until they either exercise their right of first refusal or allow them to lapse. Enron states that while the discount shipper may be required to bid up to the maximum rate at the contract expiration date, it need not presently declare its intention. Enron states that a pipeline in these circumstances is precluded from offering capacity to new shippers who require a current commitment to plan for incremental gas demand, and that these shippers may look elsewhere to fill their capacity needs.

apply to discounted contracts, but seeks clarification as to the date that the regulatory right of first refusal will apply to discounted contracts. Koch suggests that the Commission clarify that any discounted contract that was entered into for a year or more after March 1, 2000 would not qualify for the right of first refusal. In response to Koch's request, the Commission clarifies that the ROFR will not apply to any discounted contracts entered into after the effective date of Order No. 637.

3. ROFR Pricing Policy

In Order No. 637, the Commission explained that, consistent with the holding in the Policy Statement concerning Certification of New Interstate Natural Gas Pipeline Facilities (Certificate Policy Statement),[226] the maximum rate that the existing shipper must meet in order to exercise its right of first refusal may be higher than its current rate in certain very limited circumstances, *i.e.,* where a shipper has a right of first refusal on a pipeline that has vintages of capacity and thus charges different prices for the same service under incremental pricing, the pipeline is full, and a competing shipper bids a rate for the capacity that is above the existing shipper's current maximum rate. In addition, in order to charge a higher rate than the previous maximum rate, the pipeline must have in place an approved mechanism for reallocating costs between the historic and incremental rates so all rates remain within the pipeline's cost of service.[227]

As the Commission explained in Order No. 637, a higher maximum rate is appropriate when the system is fully booked and there is at least one bid above the existing rate, because in those circumstances, there would be insufficient capacity to satisfy all the demands for service on the system. When insufficient capacity exists, a higher matching rate will improve the efficiency and fairness of capacity allocation, within the limits of cost of service ratemaking, by allowing new shippers who place greater value on obtaining capacity than the existing shipper to compete for the limited capacity that is available.

In Order No. 637, the Commission explained that under this pricing policy, an existing captive customer is protected against the exercise of market power by the pipeline because the pipeline cannot insist on the shipper paying a higher rate unless its expansion is fully subscribed and there is another bid for capacity at a rate above the vintage maximum rate charged the existing shipper. These conditions ensure that the pipeline is unable to use its market power over captive customers to withhold capacity from the market to raise price. Price will exceed the current maximum rate charged the existing shipper only when a higher price is needed to allocate scarce capacity.

The Commission's ROFR pricing policy was set forth in the Certificate Policy Statement. Because Order No. 637 made other changes to the ROFR mechanism, the Commission discussed the interaction of these changes with the new ROFR pricing policy. However, nothing in Order No. 637 changes anything in the Certificate Policy Statement. The Commission merely reiterated the change to the ROFR pricing policy in order to clarify how all the changes related to the ROFR work together.

AGA, APGA, ConEd, Florida Cities, Keyspan, National Fuel, New England Distributors, UGI, Process Gas Consumers, and NASUCA seek rehearing or clarification of the Commission's ruling. The petitioners generally argue that the ROFR pricing policy is inconsistent with the NGA and Commission policy and regulations. Several petitioners ask the Commission to clarify how the policy will work in specific factual situations.

a. Consistency with Statute and Regulations. Several of the petitioners argue on rehearing that charging a higher maximum rate than the shipper's previous maximum rate is unlawful under section 4 of the NGA. APGA and Keyspan argue that the increased maximum rate would be unjust and unreasonable since it would require shippers to pay for capacity that was not built to serve them and therefore, the necessary cost causation link is missing. Similarly, UGI argues that the Commission's regulations are designed to match cost recovery with cost incurrence, and that the rate that a shipper pays for retaining capacity must be related to the character and reliability of the service received, and cannot be escalated on an arbitrary basis to the value that some other shipper receives from an unrelated service. UGI asks the Commission to clarify that the maximum recourse rate that a shipper must match is a rate for a like or a comparable incremental service.[228]

NASUCA argues that ROFR customers are not similarly situated to new customers because they impose no new construction demands on the system.

The higher maximum rate paid by a shipper exercising its right of first refusal is not unjust or unreasonable under section 4 of the NGA. The new maximum rate will be established by a mechanism approved by the Commission to assure a just and reasonable result. As explained in the Policy Statement, the Commission will review the proposed mechanisms and determine how well they achieve capacity pricing that permits as efficient an allocation of capacity as is possible under cost-of-service ratemaking, protection against exercise of market power by the pipeline, protection against overrecovery of the pipeline's revenue requirement, and equity of treatment between shippers with expiring contracts and new shippers seeking the same service. The Commission will assure in the individual proceedings that the pipeline has a mechanism to establish just and reasonable higher maximum rate prior to implementation.

Further, it is not the case that existing shippers do not cause the need for expansion. As the court stated in *Southeastern Michigan Gas Co.* v. *FERC*, 133 F.3d 34, 41 (D.C. Cir. 1998), ''[b]ecause every shipper is economically marginal the costs of increased demand may equitably be attributed to every user, regardless of when it first contracted with the pipeline.'' The Commission has concluded that existing shippers should not pay a rate that reflects expansion costs during the term of their contract, not because they did not cause the need for the expansion, but because these shippers sign long-term contracts with the expectation that increases in their rates will be related to the costs and usage of the system for which they subscribe. Raising the rates of these existing shippers during the term of their long-term contracts to include expansion costs reduces rate certainty and increases contractual risk, and the Commission has determined that their contracts should protect them from this risk. However, when the contracts expire and the existing shipper seeks to retain its service, it is just as much a cause of the need to expand as a new shipper seeking service for the first time. Under the Certificate Policy Statement, in order to determine whether an expansion is required, a pipeline seeking a certificate for new construction is directed to ask its current customers whether they are prepared to release their capacity. A

[226] Docket No. PL99–3–000, FERC ¶ 61,227 (1999), *reh'g,* 90 FERC ¶ 61,128 (2000).

[227] The Commission cited several examples given on rehearing of the Certificate Policy Statement of such a mechanism.

[228] UGI argues that there is no justification for a policy that requires an LDC seeking to retain its market area service to match the incremental rate paid by a power generator on a lateral line located 2000 miles upstream of the LDC's city gate.

decision on the part of the existing customers not to release their capacity is a cause of a need to expand the capacity.

The ROFR pricing policy applies where the pipeline charges different rates for the same service under incremental pricing. Therefore, as requested by UGI, the Commission clarifies that the maximum recourse rate that a shipper must match is a rate for a like or a comparable incremental service.

Several petitioners also argue that the ROFR pricing policy will result in rate discrimination. APGA states that there is no basis on which to distinguish between the circumstances of a pipeline with and without incremental rates, and the ROFR should apply to each the same way. APGA argues that the roll-up policy fosters different pricing treatment for pre-existing captive shippers on different pipelines solely as a function of whether the pipeline in question has incremental capacity and this price difference is unlawful under the section 4 NGA proscription against unduly discriminatory pricing and preferential treatment.

It has been the practice under Commission ratemaking policies to set individual pipeline rates based on each pipeline's different costs, and maximum rates have differed on pipelines as a result of these different costs. The result here is the same. APGA's argument suggests that the Commission should establish uniform national rates, but that is not required by the NGA.

New England argues that the policy is discriminatory because shippers taking the same service will have their contracts expire at different times, and shippers whose contracts expire earlier would face a rate increase while others continue to take the same service at the same rate. Similarly, Process Gas Consumers state that this approach is discriminatory because similarly situated shippers may be subjected to very different maximum rates for the same service for no reason other than the timing of their contract expiration dates and the mechanics of the process used to set the new matching rate.

It is not necessarily true that all companies should pay the same prices for the same goods or services regardless of when they contract for the goods or services, or when their contract expires. In an unregulated market, a firm may be able to lock-in a low price for goods or services when demand is weak relative to the available supply, while another firm contracting for the same goods or services at a later time when supply and demand conditions change may pay a higher price. Shippers who enter into long-term contracts are guaranteed the rate provided for by the contract, but there is no guarantee that they will have the same rate for that service after their contract expires. The courts have recognized that different contracts can justify rate differences.[229] However, once the contract expires, there is no basis for distinguishing between customers receiving the same service.

Section 4 of the NGA prohibits a pipeline from affording different treatment to similarly situated shippers on its system. When there are different rates in effect on the system for historical customers and new customers for the same service, this rate difference raises concerns about discrimination under the NGA. There is no valid economic reason why the pipeline should charge these customers a different rate, and the ROFR pricing policy will tend to lessen price disparities on the system by moving toward a system-wide uniform maximum rate.

b. Consistency with Commission Policy. AGA, APGA, Florida Cites, Process Gas Consumers, Keyspan, NASUCA, and New England argue that the ROFR pricing policy as applied to captive customers is inconsistent with the Certificate Policy Statement and other established Commission policy. They assert that one of the main goals of the Certificate Policy Statement is to assure that the pipeline must be prepared to support the project financially without relying on subsidies from existing customers.[230] They argue that requiring captive customers to pay the highest incremental rate on the pipeline is inconsistent with this goal because the captive customers will subsidize expansion projects at the end of their contract terms.

Further, they assert that the Certificate Policy Statement provides that existing customers should not have to bear the risk of cost overruns of pipeline expansion projects, but that these risks should be apportioned by contract between the pipeline and expansion shippers.[231] They assert that the ROFR pricing policy is inconsistent with this goal because existing captive customers will be required in the future to bear the risks associated with new pipeline projects. In addition, they assert, the Certificate Policy Statement provides that existing customers should not have to pay for a project that does not serve them,[232] and that the ROFR pricing policy conflicts with this goal because captive customers would underwrite expansion projects that were not built to serve them. In addition, they argue requiring subsidization by captive customers conflicts with the goal of sending accurate pricing signals to new shippers.

Contrary to the suggestion of these petitioners, the ROFR pricing policy is not inconsistent with the Certificate Policy Statement, but is an integral part of the policy and works to accomplish its goals. As the Commission explained in the Certificate Policy Statement, a requirement that the new project must be financially viable without subsidies does not eliminate the possibility that in some instances, the project costs should be rolled into the rates of the existing customers.[233] Existing shippers should not subsidize any new construction projects during the term of their contracts.[234] However, where the pipeline charges different rates for the same service under incremental pricing and the pipeline is fully booked,[235] requiring the customer to match the highest competing bid up to the maximum rate sends efficient price signals to existing customers whose contracts are expiring as well as to expansion customers.[236]

The ROFR pricing policy leaves the pipeline at risk for any underutilized expansion capacity because the higher rate can only be charged to historical shippers if the facility is fully booked and there is a bid above the old vintage rate. Further, as the Commission stated in the Certificate Policy Statement, in pipeline contracts for newly constructed facilities, the pipeline should not rely on standard Memphis Clauses to deal with the risk of cost overruns, but should reach a contractual agreement with the new shippers concerning who will bear the risks of cost overruns. Therefore, responsibility for cost overruns should be resolved among the pipeline and the expansion shippers before construction, and cost overruns should not be included in general rate increases that could affect the rates of the existing shippers.

AGA, APGA, Process Gas Consumers, and Keyspan are concerned that ''gaming'' by the pipelines can defeat the goals of the Certificate Policy Statement. They argue that pipelines

[229] *UMDG* v. *FERC,* 732 F.2d 202, 212 (D.C. CIR. 1984); Norwood v. FERC, 587 F.2d 1306, 1310 (Cir. 19).

[230] APGA cites the Policy Statement, 88 FERC at 61, 746–47.

[231] APGA cites 88 FERC at 61,746.

[232] APGA cites 88 FERC at 61,746.

[233] 88 FERC at 61,746.

[234] Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (slip op. at 12) (2000).

[235] In addition, as explained above, the pipeline must have an approved mechanism to implement the ROFR pricing policy.

[236] *Id.*

will be able to manipulate the timing of system expansions and contract expirations so as to subvert the Commission's goals with respect to approval and pricing for new pipeline facilities, and take advantage of the forced subsidies by captive customers. Further, Process Gas Consumers state that the pipeline can manipulate the process by considering only expansions that would raise rates and ignore those that should cause rates to decrease.

The concerns that pipeline's will ''game'' the system by scheduling expansions to coincide with contract expirations are without foundation. In order to implement a higher rate than the old maximum rate, the pipelines must implement a mechanism that reallocates costs between existing and expansion shippers without changing the pipeline's overall revenue requirement. The pipeline therefore obtains no additional revenue from implementing the higher maximum rate, and there is no incentive to game the system. Further, under the new construction policies, the pipeline must be prepared initially to finance the expansion project without subsidization from existing shippers. The circumstances where a higher maximum rate could be implemented are very limited and it would be quite risky for a pipeline to base a decision to expand its facilities on a prediction that these circumstances might be met. Moreover, the method chosen by the Commission for implementing this new pricing policy gives the Commission the ability to review any rate change mechanisms before they can take effect and gives existing shippers the ability to raise any concerns about gaming.

Process Gas Consumers' concern that the pipeline could manipulate the process by considering only expansions that would raise rates and ignore those that should cause rates to decrease is also without foundation. In the Certificate Policy Statement, the Commission recognized that while incremental pricing will usually avoid subsidies for the new project, the situation may be different in the case of inexpensive expansability that is made possible by earlier costly construction. In that instance, because the existing customers bear the cost of the earlier more costly construction in their rates, incremental pricing could result in a subsidy to the new customers. This issue of rate treatment for cheap expansability must be resolved in each individual proceeding before construction. This will protect the existing shippers where the new shippers benefit from the prior construction.

APGA also argues that the ROFR pricing policy is inconsistent with Order No. 637's stated goal of reducing revenue responsibility of captive customers because this policy could result in huge rate increases to captive customers at the end of their contracts. It is also inconsistent, APGA argues, with the rationale of the ROFR to protect captive customers at the end of the term of their contract. Process Gas Consumers also argue that the new policy violates the spirit of the ROFR derived from the NGA because the ROFR requires that a shipper match the highest rate being offered for that shipper's capacity under that shipper's existing rate schedule, not some number contrived from the rates paid by other shippers resulting from other expansions or other shippers' decisions.

Contrary to AGPA's assertion, the ROFR pricing policy will not result in huge increases to captive customers at the end of their contracts. Rates will increase only in very limited situations, *i.e.,* where the pipeline has vintages of capacity and charges different prices for the same service under incremental pricing; the pipeline is full; a competing shipper bids a rate for the capacity that is above the existing shipper's current maximum rate; and the pipeline has in place an approved mechanism for reallocating costs between the historic and incremental rates. Rates will increase only to the level that another new shipper is willing to pay for the service.

The policy is not inconsistent with the purpose of the ROFR. The purpose of the ROFR is met because the existing customer is still protected against the exercise of market power by the pipeline since the pipeline cannot insist on the shipper paying a higher rate unless its expansion is fully subscribed and there is another bid for capacity at a rate above the vintage maximum rate charged the existing shipper. Any bid that the existing customer must meet to retain its service will be a just and reasonable rate. These conditions ensure that the pipeline is unable to use its market power over captive customers to withhold capacity from the market to raise price. Price will exceed the current maximum rate charged the existing shipper only when a higher price is needed to allocate scarce capacity. While existing pipelines have been filing certificate applications to expand their facilities, the expansion proposals concentrate in certain regions. There is no reason to expect that they would all result in expansions that would justify increasing the maximum rate for historic customers.

In addition, APGA asserts that the ROFR pricing policy is anticompetitive because a customer whose contract expires soon will not be able to compete with another customer whose contract does not expire for a number of years. APGA asserts that the Commission's rationale for the ROFR pricing policy, *i.e.,* that it will promote efficiency and fairness of capacity allocation, is erroneous because captive customers have no alternatives and therefore will be forced to pay the higher rate. Similarly, Keyspan asserts that, contrary to the Commission's suggestion, this policy will not create allocative efficiency, but will require captive customers to pay higher rates when their contracts expire so that incremental customers may pay less.

APGA's concern that shippers with longer term contracts will have a competitive advantage over shippers with shorter term contracts is speculative. Further, awarding capacity to the shipper who values it the most does in fact promote allocative efficiency, and, as explained above, the only time that a shipper will have to bid a higher rate at the contract expiration is when the pipeline is fully booked and there is another bid for the capacity.

In addition, APGA argues that the new ROFR pricing policy is directly inconsistent with the ROFR policy adopted for the electric industry in Order No. 888. APGA states that in Order No. 888–B, the Commission specifically held that the maximum rate that an electric transmission customer had to meet under the ROFR should not reflect any costs for incremental expansions that occurred during the term of the customer's contract that was expiring because ''the right of first refusal is predicated on an existing customer continuing to use its transmission rights in the *existing* transmission system.'' [237] APGA asserts that this same rationale applies to the right of first refusal for captive gas transportation customers since these customers have no choice but to continue to use the existing capacity and thus should pay the rate applicable to that capacity. APGA states that the Commission has failed to justify the implementation of conflicting ROFR policies under its two enabling statutes which embody the same public interest standard.

The Commission's policy is consistent with Order No. 888 and with the portion of Order No. 888–B quoted by AGPA. Order No. 888–B provides that the maximum rate that an existing customer

[237] APGA cites Order No. 888–B, 81 FERC ¶ 61,248 at 62,085 (1997).

must pay to exercise its right of first refusal is ''the just and reasonable transmission rate on file at the time the customer exercises its right of first refusal'' [238] and, further, that depending on the rate design on file for the existing capacity, ''a customer exercising its right of first refusal could face an average embedded cost-based rate, an incremental cost-based rate, a flow-based rate, a zonal rate, or any other rate design that the Commission may have approved under section 205 of the FPA.'' [239] Thus, the electric customer exercising its ROFR is not guaranteed that it can continue service at its old maximum rate, but may be required to meet a bid up to the maximum system rate on file, just as the gas customer is required to do.

New England argues that the policy is unfair because it ignores the fact that the existing shipper has supported the pipeline for many years through a series of long-term contracts for service. Now that these facilities are heavily depreciated, New England asserts that these customers should be permitted to receive service on these facilities that they funded. New England states that the new policy will negate settlements that are in place on certain pipelines. For example, New England states, on both the Tennessee and Algonquin systems, New England LDCs contracted for incremental services and paid incremental rates; by settlement, New England agreed to pay the incremental rate for a given period and gradually roll-in the costs of the facilities over time. Now that the rates are largely rolled-in, New England asserts, it will be denied the benefits of lower rates. New England states that having paid the higher rates for many years, it would be unfair to require these shippers to match a new incremental rate when the contract covering these facilities expires.

As explained below, in order to implement a higher maximum rate, the pipeline must have in place a mechanism that allocates costs between historic and incremental rates. Procedures for approving such a mechanism will allow interested petitioners to participate, and settlements can be taken into account in determining whether a particular method is just and reasonable on a particular pipeline.

4. Implementation Mechanism

In Order No. 637, the Commission gave pipelines the option of proposing an implementation mechanism either in a full section 4 rate case or through the filing of *pro forma* tariff sheets which would provide the Commission and the parties with an opportunity to review the proposal prior to implementation. Several petitioners argue that permitting the mechanism to be implemented in a limited section 4 proceeding does not afford sufficient protections to assure that the rates will be just and reasonable. Process Gas Consumers state that the Commission generally restricts use of a limited section 4 proceeding to instances where pipelines are filing for trackers, true-ups and other minor changes, and that a pipeline seeking to raise its transportation rates is required to file a general section 4 rate case. In contrast, Process Gas Consumers state that this proposal would allow a pipeline to increase the existing shipper's base rate without a balanced opportunity to submit the rate increase to the full scrutiny of section 4 to determine whether the rate is just and reasonable. Process Gas Consumers state that this procedure will not consider the cost savings from intervening pipeline depreciation, cost-cutting, or other efficiencies or additional revenues the pipeline may be receiving from new services or other load-enhancing initiatives. Process Gas Consumers argue that the Commission must require that if a pipeline believes that its expansion benefits other shippers to the extent that they should pay for them, such a case and decision should be made in a full section 4 case to review the merits of roll-in, not through some backdoor easing in of higher maximum rates that will selectively penalize some shippers.

A full section 4 rate proceeding is one of the options a pipeline may use to implement a mechanism, but the Commission will not require it. As the Commission explained in the Order Clarifying Statement of Policy, a full section 4 proceeding can be a cumbersome way to implement this mechanism because it examines cost and revenue items and other issues unrelated to the more limited cost allocation and rate design changes needed to readjust rates at contract expiration. Pipelines, therefore, can also establish the reallocation mechanism by filing *pro forma* tariff sheets which will provide the Commission and the parties sufficient opportunity to review the proposals. Once the review is completed, the pipeline can implement the mechanism through a limited section 4 filing.

5. Grandfathering of Existing Contracts

Several of the petitioners [240] argue that if the Commission does not reverse its ROFR pricing policy, it should allow each historical shipper on an incrementally priced pipeline the opportunity, upon expiration of its contract, to elect an extension term without exposure to roll-up. They argue it is unfair to apply the policy to existing contracts without a grandfather provision because the existing contracts were entered in reliance on a ROFR that required shippers to match the maximum rate for the existing service. They argue that had the new policy been in effect at the time the current contracts were executed, they would have signed a longer-term contract.

As the Commission explained in its Order Clarifying Statement of Policy,[241] it is not appropriate to give existing customers one opportunity to renew their contracts at their existing maximum rate. Where there is insufficient capacity to satisfy all demands for capacity, an efficient system of capacity allocation would award the capacity to the shipper placing the greatest value on obtaining the capacity. A one-time mandatory renewal would conflict with that policy by permitting the existing shipper to continue service at a rate less than the highest bid.

6. Clarification

AGA and several other petitioners [242] present various fact scenarios and ask the Commission to explain how the ROFR will operate in these situations. One question posed by these examples is if there is a maximum incremental rate in effect on a system, but none of the incremental shippers are paying the maximum rate, does the shipper exercising its ROFR have to match a bid above the highest rate actually being paid, or can the shipper retain its capacity by paying the highest rate being paid by an incremental shipper. Other scenarios pose questions concerning what depreciation rate should be used to calculate the incremental rate that must be matched by the existing shipper, whether the rate is affected if the Commission places the pipeline at risk for underrecovery of costs, how the policy will apply on a zoned system,[243] how the pricing policy

[238] 81 FERC at 62,085.

[239] 81 FERC at 62,085 n.90.

[240] *E.g.,* ConEd, Florida Cities, New England.

[241] 90 FERC ¶ 61,128 (2000).

[242] ConEd, Keyspan, National Fuel, and New England.

[243] AGA gives an example where a shipper has long-haul capacity on zones 1–5 of a zoned system, and an incremental rate is in effect on zone 5 and asks, if, at the conclusion of the contract, another potential shipper bids on zone five capacity, must

will operate if a new shipper bids for a portion of the available capacity,[244] and whether a different result should occur if the expansion shipper is an affiliate of the pipeline. In addition, the petitioners ask what incremental rate will be the maximum rate on pipelines with more than one such rate and how will increased revenues paid by pre-existing shippers be credited back to incremental shippers. Keyspan asks the Commission to clarify if a shipper's contract expires in the year 2001, and is subject to the ROFR, and there is a bid in excess of the pre-expansion rate such that the shipper must match that bid, will a shipper whose contract is for the same basic capacity but expires in 2002 have to match what was paid in 2001 if there are no competing bids, or can the shipper utilizing its ROFR in 2002 simply match the pre-existing rate.

National Fuel Gas Distribution asks the Commission to clarify that if a shipper is expected to pay a higher rate, it must only be in the instances where the other shipper is receiving the same service. Distribution states that a shipper may be paying a higher rate on a lateral built specifically for that shipper, but this should not impact a long-haul shipper's cost.

New England states that the proposal will be difficult to implement. New England states that it will not always be a simple matter to determine whether a pipeline is full—the fact that there is a competing bid does not necessarily means that the system is full—if the competing bidder is a new shipper, it may simply mean that the ''old'' capacity held by the existing shipper is a better deal for the new shipper.

The fact patterns presented by the petitioners are complicated, and the Commission concludes that it will be preferable to address complex factual situations if and when they arise in the individual pipeline proceedings to implement the ROFR pricing policy. Moreover, many of the questions do not have generic application but are specific to the particular factual circumstances on a particular pipeline system. The implementation mechanism chosen by the Commission will permit the Commission and the parties to consider all the relevant facts in the specific context before applying the general pricing policy. Some of the issues raised by the petitioners, however, can be clarified here. Thus, the Commission clarifies that the existing shipper must match the highest bid incremental rate up to the maximum incremental being paid on the system. If there is a factual question as to whether there is sufficient capacity to satisfy demand on a particular pipeline, that issue can be addressed in the individual proceeding.

7. Geographical Segmentation

In Order No. 637, the Commission stated that it would not enhance the right of first refusal by holding that it can be exercised for a geographic portion of the existing contract, as requested by several petitioners. The Commission explained that the purpose of the right of first refusal is to protect the captive customer's historical service, and therefore it should apply only when the existing shipper is seeking to contract for its historical capacity. The Commission further explained that the right of first refusal is a limited right and was never intended to permit shippers to increase or change their service.[245] It is intended to be a means of defense against pipeline market power, not a mechanism to award an existing shipper a preference over a new shipper for a different service.

A shipper that can terminate a geographic portion of its historical service must have alternatives in the market that can substitute for its historical service, and therefore the Commission has concluded as a matter of policy that such a shipper does not require the protection of the ROFR. Further, as the Commission stated in Order No. 637, permitting the exercise of the ROFR for a geographic portion of the historical capacity could leave the capacity unused, and thus burden the pipeline and its other customers with the unused capacity. Therefore, the Commission concluded that maintaining the current policy and not expanding the right of first refusal strikes the appropriate balance between protecting the historic service of the captive customer and not burdening the pipeline and its other customers with unused capacity. AGA, Keyspan, Koch, and New England seek rehearing of the Commission's decision on this issue.

The petitioners argue that while the Commission has characterized its decision as a refusal to enhance the ROFR, current Commission policy permits exercise of the ROFR for a geographic portion of the capacity. They argue that Order No. 636–A provides that the ROFR applies to a ''portion'' of the pipeline's capacity without restricting the definition of ''portion,''[246] and that subsequently, in *Williams Natural Gas Co.*[247] the Commission applied this policy to permit a shipper to exercise its right of first refusal to retain its market area and storage area portion of a service agreement, but not the production area capacity. Keyspan states that Order No. 637 is also inconsistent with the Commission's reasoning in *Tennessee Gas Pipeline Co.,*[248] where the Commission held that because the pipeline's tariff did not require shippers to take transportation in both the production and market area, customers renewing their contracts could choose not to take production area capacity. These petitioners argue that the Commission has failed to provide an adequate basis for its departure from its prior holdings.

The Commission's decision is not a departure from its prior holdings. While, as the parties point out, Order No. 636 provides that the ROFR applies to a ''portion'' of the pipeline's capacity without defining the word ''portion,'' the Commission's subsequent decisions interpreting the scope of the term ''portion'' have defined ''portion'' to include a volumetric portion of the capacity, but have decline to extend the definition to include a geographic potion. Thus, in *Transcontinental Gas Pipeline Co.*[249] the Commission explained that the question of whether the ROFR should apply to a geographic portion of the capacity is a different question from whether it should apply to a volumetric portion of the capacity, and raises different policy concerns. Upon further consideration of these policy issues, the Commission determined in Order No. 637 that extending the ROFR to allow it to be exercised for a geographic portion of the capacity would not be consistent with its original purpose. As the Commission explained in Order No. 637, the ROFR is intended to protect captive customers and their historic capacity against the pipeline's exercise of market power, and is not intended to give existing shippers an advantage over other customers

the existing shipper match the bid for zone 5 short-haul, plus the maximum system-wide maximum rate for the haul across zones 1–4.

[244] AGA posits a situation where a new potential shipper seeks 10,000 Dth per day of capacity on incremental facilities bearing an incremental rate, and at the same time, 50,000 Dth per day is expiring under contracts containing the regulatory right of first refusal, and asks whether the holders of all 50,000 Dth per day must match the incremental rate offered by the potential shipper.

[245] As the Commission stated in Williams Natural Gas Company, 65 FERC ¶ 61,221 at 62,013 (1993), ''the character of the service being provided under the expiring contract cannot be changed through use of the right of first refusal.''

[246] AGA cites Order No. 636–A, FERC Stats. & Regs. [Regulations Preambles 1991–1996] ¶ 31,950 at 30,635 (1992).

[247] 81 FERC ¶ 61,350 at 62,627–28 (*Williams I*), *reh'g,* 83 FERC ¶ 61,052 (*Williams II*) (1997).

[248] 76 FERC ¶ 61,022 at 61,128–29 (1999).

[249] 88 FERC ¶ 61,155, *reh'g denied,* 88 FERC ¶ 61,295 (1999). See also Texas Eastern Transmission Corp., 88 FERC ¶ 61,167, *reh'g denied,* 88 FERC ¶ 61,291 (1999).

seeking new or different service from the pipeline. The *Williams* decision is not to the contrary. In *Williams* the Commission addressed a specific factual situation where no-notice service on the pipeline had separate transportation and storage components. In *Williams,* the Commission limited its holding to a situation where service was provided in the production area and the market area under different rates schedules, and the Commission expressly stated that it ''does not reach the issue of the existing shippers' ability to bid for different volumes of capacity in different zones under the same rate schedule.'' [250] Thus, the Commission's decision in that case was not a generic holding, but was based on the specific service characteristics of the pipeline.

Because of the potential impact on pipeline recovery, the Commission will not make a generic finding that shippers may exercise their ROFR for a geographic portion of its capacity. The determination whether this result is justified in a particular case will depend on the specific facts, as was the case in *Williams* and *Tennessee.*

The petitioners challenge the accuracy of the Commission's statement that a shipper that can terminate a geographic portion of its historical service must have alternatives in the marketplace that can substitute for its historical service and therefore is not a captive customer that requires the right of first refusal. They assert that a customer seeking to retain a portion of its service is in all likelihood a captive customer with respect to the portion of the service it seeks to retain, and that if the pipeline can use its monopoly power in the market area to require a shipper to purchase capacity in the production area, the shipper really does not have alternatives. New England states that because the Commission's factual conclusion is inaccurate, the decision to deny ROFR protection to customers seeking to take a geographic portion of their current capacity does not meet the standard set forth by the *UDC* court—it does not adequately protect captive customers from the exercise of pipeline market power.

The petitioners also state that the Commission's concerns about unused capacity do not justify its decision. AGA asserts that these concerns are speculative because projections for increased gas usage over the next decade suggest that capacity turnback by LDCs may not create significant problems for interstate pipelines, and that if unsubscribed capacity does result, there are effective policies for addressing turnback capacity generally and in individual pipeline proceedings. Keyspan states that the Commission does not explain why it is appropriate for captive customers, rather than the pipeline, to bear this burden. In addition, Keyspan states that the court's decision in *Municipal Defense Group* v. *FERC (MDG)* [251] cited by the Commission does not support its decision on geographical segmentation. Keyspan states that in that case the court decided that customers competing for new capacity must do so on an equal basis, while here the customers seeking to use the ROFR are not seeking new capacity; they are seeking capacity to which they have a right under section 7(b) of the NGA. In addition, Keyspan states that the Commission has held that third parties can submit a bid for a portion of a customer's capacity that is subject to the ROFR.[252] Keyspan argues that to the extent that third parties can bid for a geographic portion of a customer's capacity, the existing customer cannot be said to be competing with a third party on a level playing filed as was the case in *MDG.*

These arguments ignore the fact that the ROFR is intended to protect the historic service of captive customers from the pipeline's exercise of market power. It is not intended to give existing shippers an advantage over other shippers in bidding for a different or new service. What the petitioners seek on rehearing is a preference to obtain pipeline service over other shippers where that service is limited and is of high value, and at the same time obtain the ability to change the character of their historic service by eliminating geographic segments that are of less value. The ROFR allows the captive customer to keep its historic capacity, but only when the customer bids for that capacity. If a customer with a ROFR decides that it wants to change its historic service and compete with other shippers, it can always do so, but it cannot retain the ROFR to give it a competitive advantage over other shippers in these circumstances. Moreover, if a third party bids for a portion of their capacity, they may exercise their ROFR to retain the capacity and thus, contrary to Keyspan's argument, the existing customer has an advantage over the third party bidder.

The petitioners also argue that the same rationale that the Commission used in determining that a customer can exercise its ROFR for a volumetric potion of the customer's capacity applies with regard to a geographic portion of the capacity. They assert that the Commission acknowledged that the purpose of allowing the existing capacity holder to exercise its ROFR to retain a volumetric portion of its capacity was to ensure against the inefficient or unnecessary holding of capacity at the expiration of the contract. They assert that the Commission has failed to provide a persuasive rationale for requiring the inefficient retention of capacity on a geographic basis.

However, there are different considerations involved in permitting a shipper to take a geographical portion of its capacity. Allowing shippers to ''cherry pick'' the most desirable segments of their historic capacity is far more likely to leave the pipeline with stranded capacity than permitting a customer to take a volumetric portion for the entire length of the haul. Further, it gives the shipper with the ROFR a competitive advantage over other shippers, while allowing a shipper to take a volumetric portion of the capacity merely allows the customer to adjust its volume of capacity under contract to meet a changing demand.

The petitioners also argue that Order No. 637 is inconsistent with the Commission's policy of fostering competition. They state that allowing shippers to exercise their right of first refusal for a geographic portion of the capacity will promote market centers and liquid gas trading points, and facilitate the development of a competitive market that the Commission hopes to achieve in this order. Koch argues that it is anticompetitive to allow pipelines to require that shippers in the market area must hold capacity in the production area, and this limits customer's choices and the competitors ability to serve customers on these lines.

Koch acknowledges that it would be inappropriate to allow a customer to carve out a small, discrete portion of its capacity and exercise its right of first refusal on only that portion, but that it is different to allow a customer to exercise its right of first refusal for a pipeline's market area facilities so that it could select the production area facilities of another pipeline. Koch and Keyspan argue that this change would allow customers to benefit from wellhead competition and bring all the benefits of competition to parties that historically have been subject to the market power of the longline pipelines. Keyspan argues that the Commission's failure to afford captive customers the same choices as customers with alternatives is unduly discriminatory and cannot be reconciled with the

[250] *Williams,* 81 FERC ¶ 61,350 at 62,627 n.20.

[251] 170 F.3d 197 (D.C. CIR. 1999).

[252] Keyspan cites Order No. 636, FERC Stats and Regs. (1991–1996) ¶ 30,939 at 30,451–52 (1992).

court's decision in *Maryland Peoples Counsel* v. *FERC*[253] and *Maryland Peoples Counsel* v. *FERC.*[254] Keyspan states that in those decisions, the court held that the Commission could not adequately explain its decision to exclude captive customers from the benefits of certain pipeline programs, and that therefore the programs were unduly discriminatory. Similarly, Keyspan argues, in this case, the Commission has failed to explain its decision to refuse to afford captive customers the ability to exercise their ROFR rights to choose to renew only certain geographic portions of their contracts even though such alternatives are available to customers with competitive options.

Koch states that, contrary to the Commission's assertion, this would not change the type of service that the shipper is receiving. Koch states that the only change would be to the primary receipt points, and that all other aspects would remain the same, including the type of service and contract term. Keyspan also states that on a long-line system, transportation typically can be purchased on an individual zone basis and, as a result, permitting customers to exercise their ROFR on a geographic basis does not permit shippers to change their existing service. Koch states that if the service the customer is purchasing is a production area to market area service, then it is an anti-competitive tying arrangement that the Commission should eliminate independent of its right of first refusal policy.

Koch states that, not only does this policy cause an inefficient allocation of capacity, it also sends garbled price signals regarding the construction of new capacity and the corresponding value of that new capacity. Koch states that this distorted information will lead to overbuilding of capacity by the wrong pipeline, which will eventually lead to stranded costs. If the Commission does not grant rehearing on this point, Koch asks that the Commission direct the pipelines to amend their tariffs to provide that a customer can lose its ROFR only if another customer agrees to pay a rate that has a higher net present value for the original long haul than the customer is willing to pay for the short haul.

Shippers with a ROFR have the same rights to bid on geographic portions of a system, and not on other portions of the system, such as the production area, as any other shipper. Thus, this is not similar to *Maryland Peoples' Counsel* where captive customers were denied a benefit that was provided to non-captive customers. However, when bidding for a geographical portion of its capacity, the existing customer must compete with other shippers on an equal basis, and not have an advantage through the ROFR. If another bidder creates a greater net present value by bidding for a long-haul, then that bidder should receive the capacity. If the customer with the ROFR produces the highest net present value with a bid for less than the full length of haul, then it may be able to get the capacity. This benefits the system as a whole and most customers because it brings more revenue to the system, and the Commission has consistently allowed pipelines to allocate their capacity on that basis.[255]

Texas Eastern seeks clarification, or in the alternative, rehearing of the Commission's discussion in Order No. 637 of the shippers' right to exercise its ROFR for a volumetric portion of its capacity. Texas Eastern asks the Commission to clarify that its customers do not have the right to unilaterally terminate portions of their agreements unless Texas Eastern has provided notice of termination because that is the way Texas Eastern's approved tariff operates. National Fuel raises the same issue with regard to Texas Eastern's tariff and asks the Commission to clarify that where a tariff is inconsistent with the shipper's right to reduce its volumetric capacity, the pipeline should be required to file tariff language consistent with the Commission's clarification.

The Commission will not address any tariff-specific issues in this proceeding. However, the Commission has held that the regulatory right of first refusal permits the capacity holder to elect to retain a volumetric portion of its capacity, regardless of the terms of any tariff. If there are any issues regarding a specific tariff provision, they may be addressed in the individual compliance filings.

8. Five-Year Cap

In Order No. 637, the Commission stated that it would not change the length of the term matching cap at this time. In Order No. 636–C, the Commission had determined a five-year matching cap was appropriate given the evidence in that record of the industry trends in contract length, and none of the petitioners in this proceeding presented evidence to show that a five-year contract is atypical in the current market.

On rehearing, INGAA, Great Lakes, and The Williams Companies argue that the Commission should remove the term matching cap. These petitioners argue that there is evidence showing adverse consequences of the five-year cap,[256] and that the five-year cap continues a fundamental imbalance in the risks assumed by a pipeline and shipper.

INGAA argues it is illogical and unsupportable to retain the term matching cap on the basis that it is the median length of long-term contracts entered into since January 1, 1995. INGAA states that this treats half of all renewal contracts entered into since January 1, 1995 as unreasonable, when in fact the market has determined that contracts having terms longer than five years are necessary or appropriate based on commercial considerations. INGAA argues that the Commission should lift the cap and permit market forces to determine what length of contract an existing shipper must match.

TWC and Great Lakes assert that shippers that have competitive alternatives do hold maximum rate firm contracts with rights of first refusal, and TWC argues that the Commission should conclude that the five-year matching cap will not apply unless the shipper makes a positive showing that it is a captive customer and has no available alternatives. In addition, Great Lakes asserts that removal of the five-year cap does not create any unreasonable disadvantages for the existing shipper because if there are no other bidders, the existing shipper can renew its contact for any period, and if there are bidders, it can renew its contract by matching whatever term another shipper is willing to offer. Finally, Great Lakes argues that the Commission's retention of the five-year cap is inconsistent with its decision on ROFR incremental pricing. Great Lakes argues that since it is appropriate to subject a renewing shipper to market forces with regard to price, it is also appropriate to subject renewing shippers to market forces with regard to contract term.

The Commission adopted the five-year matching cap in Order No. 636–C in response to the Court's remand of the 20-year matching cap in *UDC.* In *UDC,* the court approved of the concept of a term-matching limitation ''as a rational

[253] 761 F.2d 768, 770 (D.C. Cir. 1985) (*MPCI*).

[254] 761 F.2d 780, 781 (D.C. Cir. 1985) (*MCPII*).

[255] See Tennessee Gas Pipeline Co., 91 FERC ¶ 61,053 (2000).

[256] INGAA argues that it could result in substantial turnback capacity due to the ROFR's bias toward one-year contracts. Great Lakes argues that the five-year matching cap places an unnecessary stranded capacity risk on the pipeline because it cannot sell, combine with other capacity becoming available, or reduce the need for incremental expansions by utilizing the excising shipper's capacity until the shipper rejects its ROFR.

means of emulating a competitive market for allocating firm transportation capacity,'' [257] but found that the Commission had failed to justify a 20-year matching cap. Thus, eliminating the term-matching cap as requested by the parties is not consistent with the Court's opinion in UDC. As the Commission explained in Order No. 637, there is no evidentiary basis at this time for changing the 5-year matching cap. The pipelines are not disadvantaged by the term-matching cap because it merely substitutes for the section 7(b) requirement that the pipeline obtain permission prior to abandoning service.

B. Negotiated Terms and Conditions

In Order No. 637, the Commission determined not to move forward at this time with pre-approved negotiated terms and conditions of service. The Commission explained that pipelines have been able to create open access tariff-based services with enhanced flexibility for scheduling and handling imbalances without having to negotiate terms and conditions of service with individual shippers, and, therefore, it is not clear that pre-approved negotiated terms and conditions of service are necessary. Further, the Commission explained that the negotiation of terms and conditions of service is directly related to the question of whether the Commission needs to revise its regulatory policy to accommodate a dual market structure in which some shippers with sufficient alternatives want to negotiate terms and conditions of service while other shippers remain captive, still subject to the pipeline's market power. Thus, the Commission concluded that the development of a two-track regulatory model requires further study of the interrelation between various aspects of Commission regulatory policy. TWC, Amoco, NGSA, INGAA, and CNG have asked for rehearing or clarification of this portion of Order No. 637.

TWC asserts that it is concerned that the Commission's existing procedures for implementing new rate schedules and non-conforming contracts are too slow and cumbersome to respond to the needs of the marketplace, and argues that the Commission should grant rehearing and permit negotiated rates and terms and conditions of service. However, as explained above, in Order No. 637, the Commission exercised its discretion to defer further consideration of this issue because it raises other policy questions that are not the subject of this proceeding. There is no basis for granting rehearing of this decision, and TWC's request for rehearing is denied.

Amoco and NGSA ask the Commission to further clarify the distinction between negotiated rates and negotiated terms and conditions, and how it will treat capacity turnback issues. INGAA and CNG urge the Commission to move forward with allowing negotiated terms and conditions as soon and feasible, and, in the interim, to be responsive to innovative service offerings that may be filed within the existing regulatory framework.

In Order No. 637, the Commission explained that it is not possible to formulate generic definitions applicable to all potential situations, but generally the Commission considers negotiated terms and conditions to be related to operational conditions of transportation service while negotiated rates would include the price, the term of service, the receipt and delivery points, and the quantity. A negotiated rate would not include conditions or activities related to the transportation of gas on the pipeline, such as scheduling, imbalances, or operational obligations, such as OFOs. The Commission will not further define the terms in this proceeding, but will consider specific issues, including capacity turnback issues, in response to the service offerings filed in individual pipeline proceedings.

V. Miscellaneous Issues

A. Corrections to Regulations

In Order No. 637, the Commission sought to consolidate its reporting requirements for pipelines providing open access service under subpart B (transportation under section 311 of the NGPA) and subpart G (open access transportation under the NGA) in a single section, § 284.13. But the reports concerning bypass of LDC facilities required under subpart B (§ 284.106) were not included in § 284.13, remaining in § 284.106. Prior to Order No. 637, subpart G pipelines were required to file bypass reports, because § 284.223(b) contained a cross-reference requiring subpart G pipelines to comply with each of the reporting requirements in § 284.106, which included the bypass reports. However, in Order No. 637, § 284.223(b) was removed, with the unintended effect of eliminating the existing requirement that subpart G pipelines file bypass reports. To correct this error, the Commission is revising the regulations to include the bypass reports in § 284.13(f), so that the pre-existing requirement for both subpart B and subpart G pipelines to file bypass reports will be maintained.

B. Filing of Pro Forma Tariff Sheets

The Commission's April 12, 2000 order [258] established a schedule for pipelines to file the *pro forma* tariff sheets necessary to comply with the regulations governing scheduling, segmentation, and penalties. Pipelines making *pro forma* tariff filings in response to this order must make these filings as new RP dockets and should file the *pro forma* tariff sheets on paper as well as electronically as provided in section 154.4 of the Commission's regulations.[259] To reduce the burden required to convert the *pro forma* tariff sheets to final sheets, the *pro forma* sheets should be filed as if they are proposed revisions of sheets in the existing tariff volume (with changes identified as provided in Section 154.201 of the Commission's regulations) with the words Pro Forma before the volume name, e.g., Fourth Revised Sheet No. 150, FERC Gas Tariff, Pro Forma Third Revised Volume No. 1. For the electronically filed tariff sheets, Pro Forma should be inserted at the beginning of the name field (VolumeID) in the Tariff Volume Record, i.e., the TF02 record. When the pipeline files the final tariff sheets, it need only remove the phrase *pro forma* for any unchanged sheets.

Pipelines should file the electronic *pro forma* tariff sheets through Internet E-Mail to 637FASTR@ferc.fed.us in the following format: on the subject line, specify the name of the filing entity; in the body of the E-Mail, specify the name, telephone number, and E-Mail address of a contact person; the *pro forma* tariff sheets should be attached to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions about E-Mail filing should be directed to Lorena Finger at 202–208–1222, or by E-Mail to lorena.finger@ferc.fed.us, or to Albert Rogers at 202–208–0078 or by E-Mail to albert.rogers@ferc.fed.us.

Pipelines unable to file using Internet E-Mail must file the *pro forma* tariffs on diskette along with the paper filing and must label the diskette as containing *pro forma* tariff sheets.

VI. Effective Date

The amendments to the Commission's regulations adopted in this order will become effective July 5, 2000.

[257] *UDC,* 88 F.3d at 1140.

[258] Regulation of Short-Term Natural Gas Transportation Services 91 FERC ¶ 61,020 (2000).

[259] 18 CFR 154.4.

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission. Commissioner Massey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (i) is revised to read as follows:

§ 284.8 Release of firm transportation service.

* * * * *

(i) *Waiver of maximum rate ceiling.* Until September 30, 2002, the maximum rate ceiling does not apply to capacity release transactions of less than one year. The provision of paragraph (h)(1) of this section providing an exemption from the posting and bidding requirements for transactions at the applicable maximum tariff rate for pipeline services will not apply as long as the waiver of the rate ceiling is in effect. With respect to releases of 31 days or less under paragraph (h) of this section, the requirements of paragraph (h)(2) of this section will apply to all such releases regardless of the rate charged.

3. In § 284.12, the first sentence of paragraph (c)(2)(iii) and paragraph (c)(2)(v) are revised to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

* * * * *

(c) * * *

(2) * * *

(iii) *Imbalance management.* A pipeline with imbalance penalty provisions in its tariff must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances.

* * *

* * * * *

(v) *Penalties.* A pipeline may include in its tariff transportation penalties only to the extent necessary to prevent the impairment of reliable service. Pipelines may not retain net penalty revenues, but must credit them to shippers in a manner to be prescribed in the pipeline's tariff. A pipeline with penalty provisions in its tariff must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system.

* * * * *

4. In § 284.13, paragraphs (b)(1) introductory text, (b)(1)(viii), (b)(2) introductory text, b(2)(iv), (b)(2)(vi), and paragraph (d)(1) are revised, and paragraph (f) is added, to read as follows:

§ 284.13 Reporting requirements for interstate pipelines.

* * * * *

(b) * * *

(1) For pipeline firm service and for release transactions under § 284.8, the pipeline must post with respect to each contract, or revision of a contract for service, the following information no later than the first nomination under a transaction:

* * * * *

(viii) Special terms and conditions applicable to a capacity release transaction, including all aspects in which the contract deviates from the pipeline's tariff, and special details pertaining to a pipeline transportation contract, including whether the contract is a negotiated rate contract, conditions applicable to a discounted transportation contract, and all aspects in which the contract deviates from the pipeline's tariff.

* * * * *

(2) For pipeline interruptible service, the pipeline must post on a daily basis no later than the first nomination for service under an interruptible agreement, the following information:

* * * * *

(iv) The receipt and delivery points covered between which the shipper is entitled to transport gas at the rate charged, including the industry common code for each point, zone, or segment;

* * * * *

(vi) Special details pertaining to the agreement, including conditions applicable to a discounted transportation contract and all aspects in which the agreement deviates from the pipeline's tariff.

* * * * *

(d) * * *

(1) An interstate pipeline must provide on its Internet web site and in downloadable file formats, in conformity with § 284.12 of this part, equal and timely access to information relevant to the availability of all transportation services whenever capacity is scheduled, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment whenever capacity is scheduled, and all planned and actual service outages or reductions in service capacity.

* * * * *

(f) Notice of bypass. An interstate pipeline that provides transportation (except storage) to a customer that is located in the service area of a local distribution company and will not be delivering the customer's gas to that local distribution company, must file with the Commission, within thirty days after commencing such transportation, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to commencement.

§ 284.106 [Removed and reserved]

5. Section 284.106 is removed and reserved.

6. In § 284.221, paragraph (d)(2)(ii) is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

* * * * *

(d) * * *

(2) * * *

(ii) Gives notice that it wants to continue its transportation arrangement and will match the longest term and highest rate for its firm service, up to the applicable maximum rate under § 284.10, offered to the pipeline during the period established in the pipeline's tariff for receiving such offers by any other person desiring firm capacity, and executes a contract matching the terms of any such offer. To be eligible to exercise this right of first refusal, the firm shipper's contract must be for service for twelve consecutive months or more at the applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the right of first refusal.

* * * * *

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

Appendix

Rehearing Requests Filed in Docket Nos. RM98–10–000 and RM98–12–000

REHEARING REQUEST AND ABBREVIATION

American Gas Association—AGA
American Public Gas Association—APGA
Amoco Energy Trading Corporation and Amoco Production Company—Amoco
Arkansas Gas Consumers—Arkansas Gas Consumers
Atlanta Gas Light Company—Atlanta or AGLC
Cibola Energy Services Corporation—Cibola
CNG Transmission Corporation—CNG
Coastal Companies—Coastal
Columbia Gas Transmission Corporation—Columbia Gas
Columbia Gulf Transmission Co.—Columbia Gulf
Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities Inc.—ConEd or Con Edison
Dynegy Inc.—Dynegy
El Paso Energy Corporation Interstate Pipelines—El Paso
Enron Interstate Pipelines—Enron
Florida Cities—Florida Cities
FPL Energy, Inc.—FPL Energy
Great Lakes Gas Transmission Limited Partnership— Great Lakes
Illinois Municipal Gas Agency—IMGA or Illinois Municipal Gas Agency
Independent Oil and Gas Association of West Virginia—IOGA of WV
Independent Petroleum Association of America—IPAA
Indicated Shippers—Indicated Shippers
Interstate Natural Gas Association of America—INGAA
Keyspan Gas East Corporation and the Brooklyn Union Gas Company—Keyspan
Kinder Morgan Pipelines—Kinder Morgan
Koch Gateway Pipeline Company—Koch
Michigan Gas Storage Company—MGS or Michigan Gas Storage
Minnesota Department of Commerce—MDOC or Minnesota
National Association of State Utility Consumer Advocates, Ohio Office of the Consumers Counsel, Pennsylvania Office of Consumer Advocate—NASUCA
National Energy Marketers Association—NEM
National Association of Gas Consumers—NAGC
National Fuel Gas Distribution Corporation—National Fuel Distribution
Natural Gas Supply Association—NGSA
New England Gas Distributors—New England
Niagara Mohawk Energy, Inc.—NM Energy
Northwest Industrial Gas Users—NWIGU
Ohio Oil & Gas Association—OOGA
Paiute Pipeline Company—Paiute
Process Gas Consumers Group (American Iron and Steel Institute, Georgia Industrial Group, American Forest and Paper Association ALCOA, Inc. and United States Gypsum Company)—Process Gas Consumers or Industrials
Reliant Energy Gas Transmission Company and Mississippi River Transmission Corporation—Reliant
Reliant Energy Minnegasco—Minnegasco
Scana Energy Marketing, Inc.—Scana
Tejas Offshore Pipelines, LLC—Tejas
Texas Eastern Transmission Corporation—Texas Eastern
UGI Utilities, Inc.—UGI
Washington Gas Light Company—Washington Gas
Williams Companies, Inc.—Williams
Williston Basin Interstate Pipeline Company—Williston
Wisconsin Distribution Group—WDG

MASSEY, Commissioner, *concurring:*

One aspect of today's order that I would regard as a retreat from Order No. 637 is the change in the time at which pipelines must file transactional reports. Today's order would alter the timing of the contemporaneous posting of transactional information, from contract execution to first nomination prior to gas flow. Ostensibly, this is being done to achieve comparability between the reporting requirements for pipeline transactions and those for capacity release transactions, which was one of the stated objectives of Order No. 637. With this change, however, one can still regard the pipeline transactional filing requirements as contemporaneous if one is referring to the first nomination prior to gas flow. Nevertheless, I would have preferred not to make this change.

On balance, however, this is a solid, well-reasoned order that retains the character of the original order in most respects.

William L. Massey,

Commissioner.

[FR Doc. 00–13216 Filed 6–2–00; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Monday,
June 5, 2000

Part III

Department of Education

National Institute on Disability and Rehabilitative Services; Office of Special Education and Rehabilitative Services; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 2000–2001 for new awards for the Alternative Financing Program, and the Alternative Financing Technical Assistance Program, both authorized under Title III of the Assistive Technology Act of 1998.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for awards under the Alternative Financing Program (AFP) and one award under the Alternative Financing Technical Assistance Program (AFTAP) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action in order to award grants or cooperative agreements to States to establish or maintain alternative financing projects to increase access to assistive technology (AT) for individuals with disabilities. Currently, major service programs such as Medicaid, Medicare, special education, and vocational rehabilitation cannot meet the growing demand for AT. Most individuals with disabilities do not have the private financial resources to purchase the AT they need. Loan programs offer individuals with disabilities attractive options that significantly enhance their access to AT.

DATES: These priorities take effect on August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov.

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.

Waiver of Rulemaking

Pursuant to section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that these priorities are exempt from the Administrative Procedure Act (5 U.S.C. 553). Section 437(d)(1) exempts from rulemaking the first grant competition under a new or substantially revised program authority. This is NIDRR's first grant competition under the ATAct, which replaced the Technology-Related Assistance for Individuals with Disabilities Act of 1988, as amended (Tech Act), and was signed into law on November 13, 1998.

SUPPLEMENTARY INFORMATION: This notice contains two final priorities authorized under the ATAct. The priorities are: (1) Alternative Financing Program (AFP); and (2) Alternative Financing Technical Assistance Program (AFTAP).

These final priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The authority for the Secretary to fund a financing program and technical assistance (TA) program is contained in Title III of the ATAct.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Alternative Financing Program

Background

For the first time, NIDRR is funding the Alternative Financing Program, authorized under Title III of the ATAct. The AFP will assist States to establish or maintain alternative financing projects to increase access to AT for individuals with disabilities.

The ATAct reaffirms the Federal role of promoting access to AT devices and services for individuals with disabilities and continues the AT State Grant Program, authorized under Title I of the ATAct of 1998. In 1988 Congress passed the Tech Act to assist States to identify and respond to the AT needs of individuals with disabilities. Reauthorized in 1994, the Tech Act provided Federal funds as a catalyst for permanent systemic change and as leverage within States to make AT devices and services more readily available to individuals with disabilities. All of the 56 State grantees (50 States, District of Columbia, Puerto Rico, American Samoa, Virgin Islands, Northern Marianna, Guam) have demonstrated success in increasing availability of, funding for, access to and provision of, AT devices and services. On a State level, AT State Grant Program grantees have improved delivery of AT to individuals with disabilities.

Most often, these efforts involve increased and measurable responsiveness on the part of public purchasing systems to provide AT devices and services for individuals with disabilities. Public systems include, but are not limited to, Medicaid, Medicare, special education and vocational rehabilitation. These public systems have, to varying degrees, acknowledged and met the AT needs of individuals with disabilities who qualify for the particular program.

The Rehabilitation Act of 1973, as amended, includes several provisions requiring inclusion of AT devices and services among the range of available services offered by the vocational rehabilitation system. The Individuals with Disabilities Education Act (IDEA) has included AT devices and services since 1990. IDEA requires school districts to take AT into account in their evaluations and planning for students with disabilities. For eligible recipients, Medicaid offers a viable though often unpredictable funding source. Some States have investigated ways to increase the responsiveness of private insurance companies to the AT needs of privately insured individuals with disabilities. For individuals who qualify, the aforementioned public and private agencies should, and typically would be, approached to fund AT devices and services.

In 1998, NIDRR sponsored five regional hearings on issues affecting appropriate and timely access to AT devices and services. (Blueprint for the Millennium: An Analysis of Regional Hearings, 1998) In each of the hearings, financing of AT was cited as a persistent barrier as was a general lack of knowledge about public and private financing options. Testimony from consumers, families, service providers, and developers referenced a need for financial incentives for both individuals and businesses to improve AT use. The hearings also identified the need for new funding strategies and models to expand funds for AT purchases. Public testimony also indicated that AT users want maximum autonomy in identifying their technology needs and the devices and services that will best meet these needs.

Moreover, testimony emphasized that separately, or in combination, the major service programs do not have sufficient resources to meet the growing demand for AT and that there also is a lack of private financial resources for the purchase of AT. As the number of individuals with disabilities increases and the elderly population expands, and as consumers and their families become increasingly aware of the role and

benefits of AT, the demand for AT will increase; the result will continue to be a tremendous strain on public and private third party funding sources. A significant recommendation of the hearings was that the AT State Grant Program grantees continue to work with other entities such as consumer organizations, community-based groups, and private lending institutions to establish alternative financing projects for the purchase of AT devices and services. Alternative financing projects offer individuals with disabilities attractive options and can serve as financing alternatives for individuals with disabilities who do not qualify for public financing programs. Loan programs enhance access to AT devices and services in a way that underscores independence and inclusion.

Currently, a total of 32 AT State Grant Program grantees operate alternative financing projects under Title I. The success of these Title I alternative financing projects has stimulated interest in creating opportunities for additional States to establish alternative financing projects and for States that have an existing projects to expand available resources. Currently, individuals who apply for loans under the Title I AT State Grant Program alternative financing projects obtain loans that range from $250 to $50,000. The estimated average loan is between $5,000 and $7,500. (Wallace, J., Assistive Technology Loan Financing: A Funding Alternative of Increasing Importance. *Tech Express, 1998*). The Title I AT State Grant Program alternative financing projects include various types of activities, such as revolving, guaranteed, interest buy-down, traditional or combination program models. States typically enter into an agreement with a private lending institution such as a bank or credit union and involve consumers in the selection and approval procedures.

In establishing the AFP, the Assistant Secretary recognizes that significant challenges and barriers continue to face individuals with disabilities and their families. A pervasive barrier is the absence of funding and information about funding opportunities for AT devices and services. The AFP will enable individuals with disabilities to access a funding alternative to public assistance programs. NIDRR has $3.9 million available for awards under this program in fiscal year 2000 and the President has requested $15 million for fiscal year 2001.

Description of the Alternative Financing Program

The AFP creates a new Federal program to pay a share of the cost of establishment or expansion, and administration of, an alternative AT financing program. The program features one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and others to purchase AT devices and services.

Priorities

Under 34 CFR 75.105(c)(3) and Title III of the ATAct, the Assistant Secretary gives an absolute preference to applications that meet the following priorities. The Assistant Secretary will fund under this competition only applications that meet one of the following priorities.

Priority 1: Alternative Financing Program

The Assistant Secretary establishes the AFP in order to provide assistance to States so that individuals with disabilities of all ages and their family members, guardians, advocates, and authorized representatives will have increased access to funding for AT devices and services through alternative financing mechanisms (loans). Consistent with statutory requirements:

(a) The State must enter into a contract with a community-based organization (including a group of such organizations), such as Centers for Independent Living, that has individuals with disabilities involved in organizational decision making at all organizational levels, to administer the alternative-financing program. The contract shall: (1) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of this title; (2) include provisions for oversight and evaluation to protect Federal financial interests; and (3) require the community-based organization to enter into a contract with a commercial lending institution or State financing agency.

(b) The State that receives a grant and any community-based organization that enters into a contract with the State, must annually submit, 12 months after receipt of the fiscal year 2000 award, each of the following policies, procedures, data, and information: (1) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the project; (2) A policy and procedure to assure that access to the AFP shall be given to consumers regardless of type of disability, age, income level, location of residence in the State, or type of AT device or AT service for which financing is requested through the program; and (3) A procedure to assure consumer-controlled oversight of the program.

(c) The State must provide the following information: (1) The ratio of funds provided by the State for the AFP to funds provided by the Federal Government; (2) the type of alternative financing mechanism used and the community-based organization with which the State entered into a contract; (3) the following information concerning each disabled individual served by the project: The amount of assistance, type of AT device or AT service financed through the project, type of disability, age, gender, race, ethnicity, socioeconomic status, primary language, geographic location within the State, employment status, whether the consumer is part of an underrepresented population or rural population, and whether the consumer tried to secure financial support from other sources and, if so, a description of those sources.

(d) The State must provide one or a combination of the following: (1) A low-interest loan fund; (2) an interest buy-down program,) a revolving loan fund; (4) a loan guarantee or insurance program, (5) a program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or AT services; or (6) another mechanism that meets the requirements of this program and is described in an application, peer reviewed and approved by the Assistant Secretary.

(e)(1) The State must provide matching funds so that the Federal share of the cost of the AFP is not more than 50 percent. Because section 302 (a)(3)(A) of the ATAct requires each State to receive a minimum award of $500,000, the State match must be at least $500,000; and (2) The State must provide the non-Federal share of the cost of the AFP in cash, from State, local, or private sources;

(f) The State must provide an assurance that the State will continue the AFP after Federal funding has terminated on a permanent basis or for as long as the mechanisms exist to support such a program;

(g) The State must provide an assurance that, and information describing the manner in which, the program will expand and emphasize consumer choice and control;

(h) The State must provide an assurance that the State will supplement and not supplant other Federal, State, and local public funds expended to provide any currently operating AFP in the State;

(i) The State must provide an assurance that the State will place all funds that support the AFP, including funds repaid during the life of the program, in a permanent separate account, apart from any other fund;

(j) The State must provide an assurance that the State's community-based organization will invest funds in low-risk securities in which a regulated insurance company may invest under the law of the State if the organization administering funds invests funds within this account;

(k) The State must provide an assurance that the State's community-based organization will administer the funds with the same judgement and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of such person;

(l) The State must provide an assurance that funds comprised of the principal and interest from the State account for this activity will be available to support the AFP;

(m) The State must provide an assurance that any interest or investment income that accrues on or derives from such funds after such funds have been placed under the control of the organization administering the AFP, but before such funds are distributed for purposes of supporting the program, will be the property of the organization administering the program; and

(n) The State must provide an assurance that the State will limit the indirect costs of the total amount available for the AFP to 10 percent, including both the Federal and State funds.

In addition to the statutory requirements, each project must:

(a) Provide in accessible formats materials that can be used by potential loan applicants and lending institutions to obtain, share and disseminate information on loan availability, eligibility requirements and procedures and general loan related updates; and

(b) Coordinate and share information, resources and with the State ATAct projects.

(c) Conduct and submit to NIDRR and the AFTAP an annual evaluation of its activities using the data collection instrument to be developed the AFTAP described in Priority 2.

Priority 2: Alternative Financing Technical Assistance Program

The Assistant Secretary establishes AFTAP in order to assist States in meeting the objectives of the AFP. Consistent with the statutory requirements, the AFTAP project must:

(a) Provide assistance to States preparing applications for the AFP;

(b) Assist States to develop and implement the AFP; and

(c) Provide any other information and TA the Assistant Secretary determines to be appropriate to assist States to achieve the objectives of AFP.

In addition to the statutory requirements, the AFPTA project must:

(a) Develop and implement a self-assessment instrument to determine the effectiveness of the AFPTA;

(b) Provide in accessible formats materials that contains useful and replicable information on loan projects and can be used by States under the AFP and States planning to apply under the AFP to improve the efficiency and effectiveness of their loan projects working closely with the National Internet Project located at the Georgia Institute on Technology;

(c) Develop a uniform data collection instrument for use by the AFP that includes, at a minimum, data on features of loan programs and unique characteristics and outcomes in order to comply with annual reporting requirements; and

(d) Share information and collaborate with the TA programs funded under Section 104 of the AT Act.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet 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, 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 (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Number 84.224C, Assistive Technology Act Alternative Loan Financing, Title III)

Program Authority: 29 U.S.C. 3051–3058

Dated: May 31, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–13945 Filed 6–2–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.224C]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards in Fiscal Years 2000–2001 for the Alternative Financing Program (AFP), and the Alternative Financing Technical Assistance Program (AFTAP), Both Authorized Under Title III of the Assistive Technology Act (ATAct)

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86 and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: These competitions focus on projects designed to meet the absolute priorities in the notice of final priority for these programs, published elsewhere in this issue of the **Federal Register**. Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the absolute priorities.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities for the AFP and the AFTAP and to receive technical

assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on June 16, 2000 either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10 a.m. and 12 a.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priorities. For further information or to make arrangements to attend contact Carol Cohen, Switzer Building, room 3420, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–5666. If you use a Telecommunication Device for the Deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2000, ALTERNATIVE FINANCING PROGRAM AND ALTERNATIVE FINANCING TECHNICAL ASSISTANCE PROGRAM, CFDA NO. 84.224C

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Award amount (per year) [1] [2]	Project period (months)
84.224C–1, Alternative Financing Program.	July 28, 2000	7	Outlying areas, maximum: $105,000; State Minimum: $500,000; Average: $540,000; Range: $500,000 to $3,800,000 [1].	12
84.224C–2, Alternative Financing Technical Assistance Program.	July 28, 2000	1	Year 1—200,000; Year 2—300,000	24

[1] Note: The total amount available in FY 2000 for the AFP is $3,800,000. The Secretary is required to award a minimum of $500,000 to States and to distribute any remaining funds among those States based on population and density. After award of $500,000 to seven States, the Secretary would have an additional $250,000 (approximately) to distribute among the seven States. If only four applications are approved for funding, the Secretary would distribute all available funds ($3.8 million) to those four applicants. Therefore, applicants are encouraged to apply for (with full matching requirements) a grant award of up to $3.8 million, which is the amount available if only one State applies and receives an award. The Secretary requires that the amount above the minimum of $500,000 shall be separable and clearly identified in the application, budget, and matching materials.

[2] The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount for fiscal year 2000 (See 34 CFR 75.104(b)).

Program Title: Alternative Financing Program.

CFDA Number: 84.224C–1.

Purpose of Program: The purpose of the AFP is to award grants to States to pay for the Federal share of the cost of the establishment and administration of, or the expansion and administration of, an AFP featuring one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices and AT services.

Eligible Applicants: Parties eligible to apply for the AFP are States and outlying areas that receive or have received grants under the AT State Grant Program (section 101 of the ATAct).

Matching Requirement: The Federal share of the cost of the Alternative Financing Program must not be more than 50 percent. Therefore, because the minimum Federal share is $500,000 for States, States are required to match at least $500,000. The match must be provided with cash, from State, local, or private sources. *The State must match at the exact level requested, $500,000 or greater.* The Federal share for an outlying area would be $105,000; requiring a $105,000 match.

Program Title: Alternative Financing Technical Assistance Program.

CFDA Number: 84.224C–2.

Purpose of Program: The purpose of the AFTAP is to award a grant to a public or private agency or organization to provide information and TA to States participating in AFP.

Eligible Applicants: Parties eligible to apply for grants under the AFTAP are public or private agencies and organizations, including institutions of higher education with sufficient documented experience, expertise and capacity to assist States in the development and implementation of the AFPs carried out the ATAct. A State receiving a grant under the ATP would not be eligible for a grant under the AFTAP.

Matching: No match is required.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for priorities under both the Alternative Financing Program and the Alternative Financing Technology Assistance Program. (See 34 CFR 75.210). The maximum score for all the criteria is 100 points.

(a) *Significance* (10 points total). (1) The Secretary considers the significance of the proposed project; and

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(b) *Quality of the project design* (25 points total). (1) The Secretary considers the quality of the design of the proposed project; and (2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (8 points).

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs (8 points).

(iii) The extent to which the proposed project represents an exceptional approach to the priority or priorities

established for the competition (6 points).

(iv) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources (3 points).

(c) *Quality of project services* (15 points total). (1) The Secretary considers the quality of the services to be provided by the proposed project;

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible proposed project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services (5 points).

(ii) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources (5 points).

(d) *Quality of project personnel* (15 points total). (1) The Secretary considers the quality of the personnel who will carry out the proposed project;

(2) In determining the quality of proposed project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (5 points); and

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator (5 points).

(ii) The qualifications, including relevant training and experience, of key project personnel (5 points).

(e) *Adequacy of resources* (15 points total). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization (8 points).

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (7 points).

(f) *Quality of the management plan* (10 points total). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timeliness, and milestones for accomplishing project tasks (5 points).

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (5 points).

(g) *Quality of the project evaluation* (10 points total). (1) The Secretary considers the quality of the evaluation to be conducted by the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project (5 points).

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible (5 points).

Instructions for Application Narrative: The Assistant Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An application narrative (*i.e.,* Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 75 pages double-spaced (no more than 3 lines per vertical inch) 8.5 x 11'' pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.224C–1 or C–2 and the title), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.224C–1 or C–2 and the title), Room #3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that the Department has received its application must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 11/12/99)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters, and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a Photostat copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., room 3317 Switzer Building, Washington, DC 20202, or call (202) 205–8207. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a Telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna_Nangle@ed.gov

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

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet 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 (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.224C, Assistive Technology Act Alternative Loan Financing Program)
Program Authority: 29 U.S.C. 3051–3058.

Dated: May 25, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes. You may submit applications to any program for which they are responsive to the program requirements.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. In this case it is limited to 10%.

6. Can Profitmaking Businesses Apply for Grants?

Only States may apply for the AFP and there are specific eligibility requirements for the TA project however, profitmaking entities are eligible to apply for the AFTAP.

7. Can Individuals Apply for Grants?

No. Parties eligible to apply for the AFP are States and outlying areas that receive or have received grants under the AT State Grant Program (section 101 of the ATAct).

8. How Soon After Submitting my Application Can I Find Out if It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30 of the current fiscal year.

9. Can I Contact NIDRR To Find Out if My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot

be released except through this formal notification.

10. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

11. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions if such competitions are held. This would depend on subsequent appropriations.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Alternative Financing Program and the Alternative Financing Technical Assistance Program (CFDA No. 84.224C).

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:
Address:
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N
4. Catalog of Federal Domestic Assistance #: 8 4 Title:
5. Project Director:
Address:
City State ZIP Code + 4
Tel. #: ( ) Fax #: ( )
E-Mail Address:

6. Is the applicant delinquent on any Federal debt? Yes No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*:

8. Novice Applicant Yes No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
Construction	Construction
Non-Construction	Non-Construction

10. Is application subject to review by Executive Order 12372 process?
Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
No *(If "No," check appropriate box below.)*
Program is not covered by E.O. 12372.
Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? Yes No
a. If "Yes," Exemption(s) #: OR b. Assurance of Compliance #:
c. IRB approval date: Full IRB or Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) Fax #: ( )
d. E-Mail Address:
e. Signature of Authorized Representative Date: ___/___/___

REV. 11/12/99 ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ (Signature)

_____ (Date)

_____ (Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00–13946 Filed 6–2–00; 8:45 am]

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Federal Register

Monday,
June 5, 2000

Part IV

Department of Education

34 CFR Part 361

The State Vocational Rehabilitation Services Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB14

The State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing The State Vocational Rehabilitation Services Program (VR program). These amendments are needed to implement changes in the Rehabilitation Act of 1973, as amended (Act). These changes establish evaluation standards and performance indicators for the VR program.

DATES: These regulations are effective July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., room 3014 Mary E. Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8831.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center, at (202) 205–8113.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach either Beverlee Stafford or Katie Mincey.

SUPPLEMENTARY INFORMATION: The VR program is authorized by Title I of the Act (29 U.S.C. 701–751). This program provides support to assist States in operating a comprehensive, coordinated, effective, efficient, and accountable program to assess, plan, develop, and provide vocational rehabilitation (VR) services to individuals with disabilities to enable them to prepare for and engage in gainful employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. Section 106 of the Act requires that the Secretary establish and publish evaluation standards and performance indicators for the program. These final regulations implement that requirement.

Pursuant to section 106(a)(3) of the Act and Executive Order 12866, which encourages Federal agencies to facilitate meaningful participation in the regulatory development process, the Secretary, through the Rehabilitation Services Administration (RSA) of the U.S. Department of Education (Department)—(1) consulted with the rehabilitation community during the development of the evaluation standards and performance indicators; (2) published a ''notice of intent to regulate'' to solicit comments on the development of the proposed evaluation standards and performance indicators; (3) held a public meeting to discuss several issues related to the development of proposed evaluation standards and performance indicators; (4) discussed the development of the proposed indicators on numerous occasions with various members of the rehabilitation community; and (5) published for review and comment a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**, 63 FR 55292 (October 14, 1998). In response to the NPRM, we received 62 comments, each of which we reviewed and considered in the development of the final regulations. These final regulations reflect the input received through these efforts.

These final regulations amend 34 CFR part 361, which contains the VR program regulations, by adding a Subpart E entitled ''Evaluation Standards and Performance Indicators.'' These final regulations implement certain requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102–569 (October 29, 1992), and the Rehabilitation Act Amendments of 1998 (1998 Amendments), which are in Title IV of the Workforce Investment Act of 1998 (WIA), Pub. L. 105–220 (August 7, 1998). The 1992 Amendments added section 106 to part A of Title I of the Act, which requires the Secretary to establish and publish evaluation standards and performance indicators. The 1998 Amendments modified section 106 of the Act to require that, to the maximum extent practicable, the VR standards and indicators be consistent with the core indicators of performance (Core Indicators) established under section 136(b) of WIA.

Section 106 of the Act also includes, among other things, the following requirements: (1) The Secretary establishes and publishes in the **Federal Register** evaluation standards and performance indicators for the VR program. (2) The evaluation standards and performance indicators must include outcome and related measures of program performance that facilitate the accomplishment of the purpose and policy of the VR program. (3) The Secretary develops the evaluation standards and performance indicators with input from State VR agencies (or the designated State unit), related professional and consumer organizations, recipients of VR services, and other interested parties. (4) Each designated State unit (DSU) must report to the Secretary after the end of each fiscal year the extent to which it is in compliance with the evaluation standards and performance indicators. (5) The Secretary provides technical assistance to any DSU that performs below the established evaluation standards and develops jointly with the DSU a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance. (6) If a DSU that performs below the established evaluation standards fails to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments under the VR program to the DSU until the DSU has entered into an approved program improvement plan or is complying substantially with the terms and conditions of such a program improvement plan. (7) The Secretary provides an annual report to Congress containing an analysis of program performance, including relative State performance, based on the evaluation standards and performance indicators.

The NPRM contained two evaluation standards, each of which had at least two or more implementing performance indicators by which to measure DSU performance. The NPRM also contained specific proposed performance levels for each indicator that identified the minimum level of performance that a DSU would need to achieve to pass a given indicator. Under the NPRM, a DSU would have had to pass a minimum of five of the seven proposed performance indicators, including at least two of the three proposed primary indicators, for Evaluation Standard 1 and both proposed performance indicators for Evaluation Standard 2.

These final regulations contain a limited number of significant changes to what we proposed in the NPRM. These changes are based on both public comment and interdepartmental review. A detailed description of these changes is contained in the ''Analysis of Comments and Changes'' section. In addition, we reviewed and revised the final regulations in accordance with the Department's ''Principles for

Regulating,'' which were developed as part of the Administration's regulatory reinvention initiative under the ''National Performance Review II.'' The principles are designed to ensure that we regulate in the most flexible, most equitable, and least burdensome way possible.

Analysis of Comments and Changes

In response to our invitation in the NPRM, we received 62 comments on the proposed regulations. Our analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject under appropriate sections of the regulations. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. Please note also that, in the NPRM, we requested comments on several issues regarding performance standards and indicators that are currently under consideration for regulatory development, including draft proposed Evaluation Standard 3 (Consumer Satisfaction), draft proposed Evaluation Standard 4 (Retention of Employment and Earnings), and draft proposed Evaluation Standard 5 (Adequate Use of Resources). We received many comments on these draft proposed evaluation standards and will give each comment serious consideration during the development of additional standards and indicators. We thank all individuals and organizations for their input.

Section 361.81 Applicable Definitions

Definition of ''Full-time Employment''

Comments: Five commenters stated that requiring a minimum of 35 hours per week for a position to be considered ''full time'' is not realistic and recommended that the number of hours be lowered to 30 or 32 hours as a more accurate reflection of existing workplace conditions. Other commenters objected to any minimum for the number of hours worked per week required to constitute ''full-time employment'' and stated that the determination of whether the work is ''full time'' should be consistent with the implementation of the individual's Individualized Plan for Employment (IPE).

Discussion: The proposed definition of ''full-time employment'' applied only to proposed Performance Indicator 1.7, which would have measured the percentage of individuals in ''full-time,'' competitive employment who would have been eligible to enroll in a medical insurance program. Because we have deleted proposed Performance Indicator 1.7 (for reasons discussed later in this preamble), a definition of the term ''full-time employment'' is no longer necessary.

Changes: We have deleted the proposed definition.

Definition of ''Individuals From a Minority Background''

Comments: None.

Discussion: We have adopted the designations mandated by the Office of Management and Budget (OMB) for reporting and recording race and ethnicity, as mandated in the ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (Revisions), 62 FR 58, 781–85, and 790 (October 30, 1997). These designations are mandatory for all new and revised recordkeeping or reporting requirements that include racial or ethnic information after the publication date of the ''Revisions.''

Changes: Because OMB designates ''individuals from a minority background'' differently from the definition included in the NPRM, we have changed the proposed regulatory definition to conform to OMB's designation.

Definition of ''Non-minority Individual''

Comments: Eight commenters disagreed with the proposed definition of ''non-minority individual'' and recommended that the term be defined as those individuals whose ethnicity or race is reported as White who are non-Hispanic.

Discussion: As we previously discussed, we have adopted the race and ethnicity designations mandated by OMB for recording and reporting race and ethnicity. The NPRM proposed to identify as ''non-minority individuals'' those individuals who designate themselves as both non-Hispanic and White using the OMB-mandated designations.

The ''Revisions'' mentioned previously— (a) require the data collector to request that the individual identify himself or herself; and (b) explicitly allow the individual to identify as many race or ethnicity designations as the individual believes apply. The data collector is to accept the individual's designation or designations and may not make any independent judgment regarding the individual's choice.

Changes: We have revised the definition of ''non-minority individuals'' to be consistent with OMB's definition.

Definition of ''Service Rate''

Comments: Two commenters requested clarification of this term. These commenters stated that it was not clear whether the computation would be based on the rate services are accessed or the rate employment outcomes are achieved.

Discussion: The term ''service rate'' reflects the rate at which services were received by individuals who exited the VR program and is not based on the rate at which the individuals achieve employment. (The response to comments regarding Performance Indicator 2.1 includes an expanded discussion of this issue.)

The numerator for the service rate calculation is the number of individuals whose records are closed after they have *received* services under an IPE, whether or not they achieved an employment outcome. The denominator of the ratio is the number of all individuals whose records are closed after they had *applied* for services, whether or not they had an IPE. The denominator includes those individuals who— (1) applied for VR services but were not accepted into the program for any reason (including failure to cooperate, moved, *etc.*); (2) had been accepted for VR services but did not receive services for any reason (including those individuals who withdrew from the program while on a waiting list where the DSU is under an order of selection for services); (3) received services under an IPE but did not achieve an employment outcome; and (4) received services under an IPE and achieved an employment outcome. RSA will calculate the service rate for both minority and non-minority VR consumers.

Changes: None.

Section 361.82 Evaluation Standards

Comments: Two commenters expressed concern that the evaluation standards and performance indicators do not assess whether the employment outcome is consistent with the individual's informed vocational choice.

Discussion: While these final regulations do not contain a performance indicator for measuring informed choice, we want to emphasize our commitment to ensuring that each individual applicant and eligible individual is able to exercise informed choice throughout the VR process. We also want to emphasize that we expect to develop an indicator to measure the extent to which informed choice is part of the provision of services. As discussed in the preamble to the NPRM, we have proposed development of an evaluation standard for consumer

satisfaction (draft proposed Evaluation Standard 3 (Consumer Satisfaction)) that, in part, would measure the level of informed choice given to consumers during the VR process. We are in the process of reviewing the comments received on draft proposed Evaluation Standard 3. However, until an evaluation standard for measuring informed choice is formally proposed through the regulatory process, the requirement for informed choice will continue to be enforced through the monitoring and review process mandated in section 107 of the Act.

Changes: None.

Section 361.84(c) Performance Indicators

Section 361.84(c)(1)(i) Performance Indicator 1.1

Comments: One commenter suggested that Performance Indicator 1.1 be changed to measure the number of people who ''enter employment'' to make this indicator consistent with Core Indicator I under section 136(b) of WIA. The commenter notes that Core Indicator I measures the extent to which individuals ''enter unsubsidized employment,'' while Performance Indicator 1.1 will measure the extent to which individuals ''exiting the VR program * * * achieved an employment outcome.'' The commenter questioned the need for the differences between the two measures and also questioned whether Performance Indicator 1.1—under which individuals with disabilities must maintain employment for at least 90 days to be considered to have ''achieved an employment outcome''—establishes a more restrictive standard for the VR program than that which applies to programs under Title I of WIA.

Discussion: As the commenter correctly points out, the Act requires that the standards and indicators for the VR program be consistent, to the maximum extent practicable, with the four Core Indicators established under section 136(b) of WIA. To that end, Performance Indicator 1.1 is consistent with the general objective of the WIA Core Indicators, which is to examine the success in achieving employment outcomes for individuals receiving services, but also accounts for the range of employment outcomes available under the VR program. ''Employment outcomes'' under the VR program include the full scope of employment options available to persons receiving VR services (*e.g.,* competitive employment, employment in non-integrated settings, homemaker, and unpaid family worker), whether those ''employment outcomes'' are ''subsidized'' or ''unsubsidized.'' Thus, in assessing success in achieving employment outcomes under the VR program, it is necessary to consider the full range of outcomes contemplated by the Act.

Performance Indicator 1.1 also reflects other requirements that are specific to the VR program. In addition to making VR services available to individuals with disabilities entering the job market, the VR program authorizes VR services for eligible individuals who need those services to retain their current job. Thus, measuring only the number of individuals ''entering'' employment under the VR program, as done under WIA Core Indicator I, would not account for those individuals who receive VR services to maintain or continue their employment.

More generally, determining whether a VR program participant has successfully achieved an employment outcome depends on many factors in addition to the individual's ability to start or enter a job. For example, under the VR program regulations, the individual's employment must be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, and the individual must be performing well on the job. Success in meeting these requirements cannot be accurately measured at the time the individual enters employment. Therefore, the determination of whether a VR program participant has successfully achieved an employment outcome is best made at a later point. The 90-day retention period from the time the individual begins working or no longer receives VR services is designed to ensure that the particular job is appropriate to the individual and has at least some measure of stability. We believe that using this and the other requirements for achieving an employment outcome under 34 CFR 361.56 to measure whether an individual's participation in the VR program was successful is much more accurate than focusing solely on the ability of an individual to enter employment. Thus, the differences between proposed Performance Indicator 1.1 and WIA Core Indicator I are necessary, and further alignment of the two measures would not result in an accurate measure of the extent to which States are successful in assisting people with disabilities achieve employment outcomes under the VR program.

Nevertheless, we recognize that the WIA Core indicators represent important measures for all programs, including the VR program, that are part of the One-Stop service delivery system established under Title I of WIA. Section 136(b)(2)(A)(i)(II) and (III) of WIA (WIA Core Indicators II and III) measure retention of unsubsidized employment 6 months after entry into employment and earnings 6 months after entry into employment, respectively. Consequently, we developed Draft Proposed Evaluation Standard 4 and its attendant draft performance indicators and presented those draft measures for public comment in the preamble to the proposed regulations, in an effort to ensure that future measures for the VR program reflect Core Indicators II and III. Since the proposed regulations were published, however, we have been working with the Department of Labor to further modify that draft Standard and its Indicators to better align those measures with each of the first *three* Core Indicators under Title I of WIA (the fourth WIA core indicator—attainment of a recognized credential—is not reflected in our drafts since the success of the VR program is judged solely on the basis of achievement of employment outcomes, particularly high-quality outcomes).

The new draft Standard, which we would implement through a separate rulemaking effort (*i.e.,* an NPRM seeking public comment and final regulations) would measure the extent to which participants in the VR program: (1) achieve an employment outcome with wages after receiving VR services (analogous to WIA Core Indicator I—entry into unsubsidized employment), (2) retain their employment 6 months after exiting the VR program with a job (WIA Core Indicator II), and (3) increase their earnings from the time they enter the VR program to the point 6 months after they exit the program with a job (WIA Core Indicator III). We are also working closely with the Department of Labor to adopt a common data base, specifically, the Unemployment Insurance (UI) Wage Data system maintained by State Employment Security Agencies, for purposes of measuring performance under the new draft Standard.

Consequently, this new measure under the VR program would be very closely aligned with the performance measures under WIA on key performance items that are common to all employment programs, *i.e.,* helping unemployed persons become employed, working to ensure that participants are able to retain their jobs, and assisting persons to obtain or maintain employment in which their earnings increase over time. We expect to publish this new Standard and supporting

indicators for public comment once we have completed our assessment of the extent to which State VR units can obtain and use UI wage record information in support of the draft Standard and have determined the types of assistance State VR units might need to complete those tasks. We are giving a high priority to these efforts in order to better streamline the systems for measuring performance across partner programs of the One-Stop delivery system.

Available data collection methods and instruments enable us to implement only Standards 1 and 2 of the final regulations at this time. However, once we have confirmed that State VR agencies are able to report on the draft standard, we will determine what combination of evaluation standards and performance indicators (*e.g.,* adding the draft Standard and indicators to the performance measures in these final regulations, using the draft Standard as a substitute for one or more of the final regulatory measures, or implementing some other combination of measures) should be implemented in the future. Therefore, the future performance system for the program will include that combination of measures that best accounts for the uniqueness of the VR program and the need for a universal system for measuring performance of the State One-Stop system.

Changes: None.

Section 361.84(c)(1)(ii) Performance Indicator 1.2

Comments: Twelve commenters recommended that Performance Indicator 1.2 should measure only the percentage of individuals who obtain employment after the individual is determined eligible and an IPE has been established. These commenters further recommended that Performance Indicator 1.2 should not measure the percentage of individuals whose cases were closed (either as ineligible or after an eligibility determination was made) before any services were received.

Discussion: We agree with the comments and want to clarify that those individuals whose cases were closed (either as ineligible or after an eligibility determination) before any services were received will not be included in the percentage of individuals measured by Performance Indicator 1.2. As recommended by the commenters, Performance Indicator 1.2 will measure only the percentage of individuals who exit the VR program after they have been determined eligible and an IPE has been implemented.

Changes: None.

Section 361.84(c)(1)(iii) Performance Indicator 1.3

Comments: Five commenters recommended that those individuals who achieve an employment outcome of ''self-employment'' be eliminated from consideration under Performance Indicator 1.3 until a means to measure the true wages of self-employed individuals is developed. These commenters believe that the concept of ''wages'' is not applicable to self-employed individuals because wages apply to what one person must pay another and not what someone may be willing to earn if they are self-employed.

Discussion: Performance Indicator 1.3 is not dependent on measuring ''wages'' per se. The measure is of an individual's ''earnings'' and whether those ''earnings'' are equivalent to at least the minimum wage. Although self-employed individuals may not earn ''wages'' per se, they do have ''earnings,'' and their ''earnings'' can be calculated on an hourly basis.

In addition, ''self-employment'' is specifically included within the definition of ''employment outcome'' in section 7(11) of the Act. Congress has recognized the importance of including all possible employment outcomes for individuals with disabilities. The VR program regulations and these indicators should be consistent with the Act and congressional intent. Therefore, we believe that self-employment outcomes for individuals with earnings comparable to at least the minimum wage should be included in the percentage of individuals who exit the VR program with earnings comparable to at least the minimum wage.

Changes: None.

Section 361.84(c)(1)(v) Performance Indicator 1.5

Comments: Some commenters were concerned about comparing the earnings of VR consumers exiting the VR program to the State's average hourly earnings. Their concern was based on their belief that most VR consumers achieve employment outcomes that are at the level of workers newly entering the work force while the State's average hourly wage is computed for all workers in the State, including workers with years of employment. These commenters believed that a more appropriate comparison would be to the average entry level worker in the State's work force.

Discussion: The assumption that most VR consumers achieve only employment comparable to that of new workers is inconsistent with the available data. The ''Third Interim Report'' of the ''Longitudinal Study of the Vocational Rehabilitation Service Program,'' published in August 1998 (''Third Interim Report''), reported that over 96 percent of VR consumers who achieved employment outcomes had prior work experience. Specifically, the report stated the following: 36.9 percent of VR consumers were working at the time they applied for VR services; 37.8 percent of VR consumers had worked in the 2 years prior to applying for VR services; and 21.7 percent of VR consumers had worked previously, but not in the 2 years prior to applying for VR services. Additionally, the performance indicator includes only those individuals earning at least the minimum wage (necessarily excluding those individuals who earn less than the minimum wage at placement and whose inclusion would lower the ratio), and the minimum performance level is set at a ratio of less than .6 (an earnings level for VR consumers of less than 60 percent of the ''State Average Annual Pay''). We believe the performance level for Performance Indicator 1.5 is consistent with the Act's emphasis on high-quality employment outcomes. Therefore, we do not believe a change is needed in this performance indicator.

Changes: None.

Section 361.84(c)(1)(vii) Performance Indicator 1.7

Comments: Fourteen commenters expressed concern that proposed Performance Indicator 1.7 was not a fair measure of DSU performance because the provision of medical insurance by the employer is outside the DSU's control. In addition, they felt that this proposed measure does not account for variability among States with regard to the availability of insurance programs and the changing nature of the labor market where employment-related benefits are less available. Three commenters were concerned that this proposed indicator would negatively impact VR consumers obtaining jobs with small employers who are less likely to provide medical insurance as a benefit option.

Discussion: Performance Indicator 1.7 would have addressed what research indicates is a major impediment to individuals with disabilities entering the workforce—the unavailability of adequate health insurance. The growing number of employers that do not provide health insurance worsens this problem. If this trend continues, DSUs will have reduced opportunities to place individuals with disabilities into jobs that provide health insurance. This would cause their performance on Indicator 1.7 to erode.

However, many individuals are covered by Medicaid, Medicare, and private insurance provided by their spouses, families, or other means. Also, all employees are covered by workers' compensation for injuries and illnesses that occur while on the job. In addition, the ''Ticket-to-Work and Work Incentives Improvement Act of 1999,'' Pub. L. 106–170 (December 17, 1999), allows Medicaid recipients to keep their coverage even if they find employment. Because approximately one quarter of all individuals served by the VR program receive Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), we expect that a growing number of individuals served by the DSUs will be eligible to retain Medicaid after they find employment. This will reduce the need for employer-provided health insurance for individuals served by DSUs.

Despite this limited availability of health insurance for some individuals served by DSUs, the problem persists. Of the nearly 34.67 million poor people in the U.S., only approximately 14 million are covered by Medicaid. Of the remaining 20.67 million poor, only approximately 9.47 million have health insurance. The remaining 11.2 million poor do not have health insurance and will not be helped by the new law.

In proposing this indicator, we assumed that health insurance was evenly distributed across the income spectrum and was reasonably available at all levels of income. However, further examination of the data provided in the ''Third Interim Report'' indicates the difficulty in finding jobs that offer health insurance at the wages earned by the majority of individuals with disabilities who are served by VR agencies.

For example, nearly 31.5 percent of individuals who are placed in competitive employment by a VR agency make $5 or less per hour. However, only 13 percent of jobs that pay $5 or less per hour offer health insurance.

In addition, nearly 31 percent of individuals who are placed in competitive employment by a VR agency make more than $5 but less than $7 per hour. However, only 35 percent of jobs that pay more than $5 but less than $7 per hour offer health insurance.

For slightly higher paying jobs, the percentage that offer health insurance increases significantly, although the percentage is still barely more than 50 percent. For example, 52.1 percent of jobs that pay more than $7 but less than $9 per hour offer health insurance. However, only 16.6 percent of individuals who are placed in competitive employment by a VR agency make more than $7 but less than $9 per hour.

The increase in jobs that offer health insurance is not as dramatic as wages increase. Only 54.9 percent of jobs that pay more than $9 but less than $11 per hour offer health insurance. However, only 8.8 percent of individuals who are placed in competitive employment by a VR agency make more than $9 but less than $11 per hour.

Finally, at the highest wage level for which we have data, 65 percent of jobs that pay more than $11 per hour offer health insurance. However, only 12.1 percent of individuals who are placed in competitive employment make more than $11 per hour.

The data show that nearly 62.5 percent of individuals who achieve competitive employment earn $7 or less per hour and that only a small percentage of jobs at these low wage levels offer health insurance. Therefore, we believe that the burden associated with satisfying this proposed indicator does not justify the extra resources, time, and effort DSUs would have to devote to finding those few jobs that offer health insurance for the majority of individuals served by DSUs.

In addition, even if we did believe finding the few jobs with health insurance was worth the extra burden, we believe that this proposed indicator would not have encouraged DSUs to assist individuals with disabilities to acquire health insurance from other sources, even though those other sources may be more appropriate for many individuals with disabilities. This proposed indicator also would have served as a disincentive to recruiting and accepting individuals with little or no education or work experience. Instead, this proposed indicator would have provided an incentive for recruiting and accepting those individuals with disabilities who already are well-educated, have extensive job experience, or are more likely to be candidates for community college or university training. We do not believe this would be a desirable result.

The data from the ''Third Interim Report'' also indicate that part-time workers, who are a significant percentage of individuals with disabilities who are employed, are less likely to find jobs that offer health insurance. Finally, the data indicate that firms with fewer than 25 employees are least likely to offer health insurance. These data show the difficulty in finding jobs that offer health insurance for individuals with disabilities, who are more likely to end up in low-paying, part-time jobs with smaller employers.

We believe DSUs should make every reasonable effort to find those employers who will provide health insurance to their employees who are not covered by Medicaid or some other health insurance. However, we recognize the difficulty in finding those employers. For this reason we believe this proposed indicator is not appropriate at this time.

Changes: We have deleted proposed Performance Indicator 1.7.

Section 361.84(c)(2)(i) Performance Indicator 2.1

Comments: One commenter suggested that Performance Indicator 2.1 does not include enough variables to adequately assess DSU services to individuals from minority backgrounds. This commenter suggested that comparing minority versus non-minority numbers by type of closure would be more statistically significant. Another commenter suggested that a better measurement than service rate would be to compare the employment outcome rate of individuals from minority backgrounds to the employment outcome rate of non-minority individuals. Still another commenter suggested that this indicator should compare the employment outcome rate, the average hourly wages, and availability of medical insurance benefits of individuals from minority backgrounds to those of non-minority individuals. One commenter questioned the need for this indicator if it can be satisfied through an examination of the DSU's policies and procedures.

Discussion: At this time, we do not have any data on which to compare the employment outcome rates, the average hourly wages, types of closures, or availability of medical insurance benefits of individuals from minority backgrounds to those of non-minority individuals. We believe that the comparison of service rates between individuals from minority backgrounds and individuals from non-minority backgrounds as the performance indicator for this evaluation standard is the appropriate starting point to determine whether individuals with disabilities from minority backgrounds have equal access to VR services. As we continue to collect additional data, we may determine in the future that comparing minorities and non-minorities by the type of closure, rate of employment outcomes, average hourly wages, or availability of medical insurance benefits is also necessary. Until we collect that additional data, we will not be able to develop an indicator to measure these factors.

We believe that requiring a DSU to describe the policies it has adopted and

the steps it has taken to ensure that individuals with disabilities from minority backgrounds have equal access to VR services is the best performance indicator for this evaluation standard. The two-step approach in § 361.86(b)(2)(i) and (ii) for measuring compliance with Performance Indicator 2.1 ensures that DSUs will make appropriate efforts to ensure equal access to services for minority individuals.

Changes: None.

Section 361.84(c)(2)(ii) Performance Indicator 2.2

Comments: Nine commenters suggested that proposed Performance Indicator 2.2 should be eliminated because it is invalid to compare individuals with significant disabilities who self-report to the Census a disability that prevents them from working to individuals with significant disabilities who are eligible to receive VR services. Four commenters recommended deleting this proposed indicator if the 2000 Census does not include the data necessary to measure how to comply with it. Three commenters suggested that comparing the percentage of DSU consumers who are from minority backgrounds to the percentage of minority individuals in the general population is a more valid and reliable indicator. One commenter suggested that data on SSDI beneficiaries and SSI recipients may be used as an alternative to Census data.

Discussion: In addition to the comments opposed to this proposed indicator, the Bureau of the Census has decided not to continue to collect the data necessary to perform the proposed comparison. We will give serious consideration to the comments on the proposed indicator in the development of a new indicator.

Changes: We have deleted proposed Performance Indicator 2.2.

Section 361.86 Performance Levels

Comments: Three commenters stated that establishing different performance levels for agencies that serve only blind or visually impaired individuals implied incorrectly that those individuals were more significantly disabled than individuals served by general or combined DSUs. Two commenters were concerned that the lower performance levels for agencies serving only blind or visually impaired individuals were in conflict with the Act's commitment to competitive employment outcomes above the minimum wage. These two commenters recommended raising the level of performance for these agencies over a reasonable period of time so that they are eventually at the same performance level as general and combined DSUs.

One commenter suggested that we create a separate performance level for combined DSUs because many States are considering creating a separate agency serving blind and visually impaired individuals. The commenter also suggested that the transition for those combined DSUs will be easier if different performance levels are in effect when the transition occurs.

Discussion: We believe that agencies serving only individuals who are blind or visually impaired should continue to have different levels of performance from combined DSUs (those agencies that serve individuals who are blind or visually impaired and individuals with other disabilities) and general DSUs (those agencies that do not serve individuals who are blind or visually impaired). Individuals served by agencies for the blind are, in many (if not most) cases, totally blind. Total blindness is a significant disability that often places more limitations on an individual than other types of disabilities. As a result, the services provided by agencies that serve individuals who are blind or visually impaired are generally more comprehensive and take longer to provide than the services provided to many individuals who receive VR services from a general or combined DSU. In addition, because of the significance of their disability, a much smaller number of individuals who are blind or visually impaired achieve a competitive employment outcome. The greater significance of their disability also results in generally lower wage levels for the majority of individuals served by agencies that serve individuals who are blind or visually impaired. These factors and the challenges faced by individuals who are blind or have visual impairments require that we establish different performance levels for agencies serving these individuals.

The performance levels established in these final regulations are only the first step in ensuring improved DSU performance. The Act requires that the standards and indicators be reviewed every 3 years. Section 361.86(a)(2) of these final regulations allows us to establish new performance levels through the regulatory process, which includes the opportunity for public comment. We intend to adjust performance levels in the future to ensure that all agencies—general DSUs, combined DSUs, *and* agencies serving individuals who are blind and visually impaired—provide the highest quality of services to eligible individuals.

Changes: None.

Comments: Five commenters recommended that the availability of resources and whether a DSU is operating under an order of selection for services under section 101(a)(5) of the Act be included as factors in determining minimally acceptable levels of performance.

Discussion: We agree that the availability of resources belongs in the performance equation. However, we do not agree that the availability of resources should be included in measuring whether a DSU has achieved a minimally acceptable level of performance. Given that DSUs with the same amount of resources may perform quite differently, the proper criterion for measuring performance under an outcome-based standards and indicators system is whether a DSU is successfully assisting individuals with disabilities to achieve employment outcomes. If a DSU fails to meet the indicator for achieving a minimally acceptable level of performance (*e.g.*, achieving employment outcomes), the Act and the regulations require that the Secretary and DSU jointly develop a program improvement plan that outlines the specific actions the DSU will take to improve program performance. In developing the program improvement plan, we will consider, pursuant to the Act and these final regulations, all available and relevant data and information related to the DSU's performance. Because the availability of resources greatly affects what actions may be taken to improve performance, we believe that the time to properly consider the availability of resources will be during the development of the program improvement plan.

In reviewing data concerning the past performance of all DSUs, we found that the performance of DSUs operating under an order of selection did not, overall, vary significantly from the performance of DSUs not operating under an order of selection. Thus, whether or not a DSU is operating under an order of selection should not be a factor in determining a minimally acceptable level of performance. However, the yearly analysis of program performance based on the standards and indicators (to be included in the Annual Report to Congress) will indicate whether a DSU is operating under an order of selection.

Changes: None.

Comments: Two commenters were concerned that meeting the performance level for Performance Indicator 2.1 may

result in quotas because the level is set too high.

Discussion: We disagree that Performance Indicator 2.1 requires a DSU to impose quotas. If the service rate for minority individuals is less than 80 percent of the service rate for non-minority individuals or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU only needs to describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services. In these instances, RSA will examine a DSU's existing or proposed policies and the steps it has taken or proposes to take to determine their effectiveness in achieving equal *access* for minority individuals with disabilities.

A greater than 20 percent racial disparity in service rates will trigger a review of a DSU's seemingly neutral practices to determine whether they are having the effect of racial discrimination. This approach is well-established within the Department and in desegregation case law. Its use in the education context dates to the early 1970's when the Department of Health, Education, and Welfare, the predecessor to the Department of Education, was actively involved in the desegregation of public school districts pursuant to the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S.Ct. 1267 (1971). In that case, the Court held that a ''substantial disproportion'' in the racial composition of schools warranted an examination of the school district's policies and practices to determine if remedial action was necessary. In adopting this measure of performance, and in response to the commenters' concern that the measure may require quotas, we are guided by the Federal case-law established pursuant to *Swann*. Courts have held that the law does not require a racial balance reflecting the composition of the community. However, courts have ruled that limited use of mathematical ratios may serve as a starting point in identifying whether a racial imbalance is the result of racial discrimination that requires remedial action.

Changes: None.

Section 361.88 Reporting Requirements

Comments: None.

Discussion: Our decision to delete proposed Performance Indicators 1.7 and 2.2 (discussed previously) eliminates a DSU's need to report data measuring its performance on those indicators.

Changes: We have deleted the requirements to report the number of individuals exiting the VR program in full-time, competitive employment (proposed § 361.88(a)(7)); health insurance data (proposed § 361.88(a)(8)); and the number of individuals from minority backgrounds with significant disabilities who exit the program after receiving VR services under an IPE (proposed § 361.88(a)(13)).

Therefore, we have correspondingly renumbered the remaining reporting requirements (numbered (9), (10), (11) and (12) in the NPRM) as §§ 361.88(a)(7) through (10), respectively.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands our capacities for helping to exchange ideas and obtain information needed to achieve the goals.

These final regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of this order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. This preamble identifies and explains any burdens that may be specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the final regulations justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM under the following headings: Executive Order 12866 (1. Potential Costs and Benefits) and Paperwork Reduction Act of 1995. (63 FR 55292 and 55301) We include additional discussion of potential costs and benefits in the section of this preamble titled Analysis of Comments and Changes.

We believe the changes in these final regulations will improve the VR program and will yield substantial benefits in terms of improved accountability and performance. We also believe the final regulations will improve accountability by focusing on the most critical areas of DSU performance. Therefore, we have determined that the potential benefits of these changes justify the potential costs.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the

United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.126 The State Vocational Rehabilitation Services Program)

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: March 6, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends Title 34, Chapter III, part 361, of the Code of Federal Regulations as follows:

1. The authority citation for Part 361 continues to read as follows:

Authority: 29 U.S.C. 711(c), unless otherwise noted.

2. Subpart E, consisting of §§ 361.80 through 361.89, is added to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart E—Evaluation Standards and Performance Indicators

Sec.
361.80 Purpose.
361.81 Applicable definitions.
361.82 Evaluation standards.
361.84 Performance indicators.
361.86 Performance levels.
361.88 Reporting requirements.
361.89 Enforcement procedures.

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for the Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in § 361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the vocational rehabilitation (VR) program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual's record of VR services in one of the following categories:

(1) Ineligible for VR services.

(2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.

(3) Received services under an IPE but did not achieve an employment outcome.

(4) Eligible for VR services but did not receive services under an IPE.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race and ethnicity in any of the following categories: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or Hispanic or Latino.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(a)(1), (*i.e.*, the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals who report themselves exclusively as White, non-Hispanic.

Performance period is the reporting period during which a DSU's performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year beginning with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness must report each year the aggregated data for the 2 previous years for Performance Indicators 1.1 through 1.6; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—

(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and

(2) The ratio between the average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher and the State's average hourly earnings for all employed individuals.

RSA–911 means the Case Service Report that is submitted annually by a DSU as approved by the Office of Management and Budget (OMB).

Self-employment means an employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers.

Service rate means the result obtained by dividing the number of individuals who exit the VR program after receiving one or more services under an IPE during any reporting period by the total number of individuals who exit the VR program (as defined in this section) during that reporting period.

State's average hourly earnings means the average hourly earnings of all persons in the State in which the DSU is located.

(Authority: 29 U.S.C. 726(a))

§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the VR program.

(b) A DSU must achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for the VR program are—

(1) *Evaluation Standard 1—Employment outcomes.* A DSU must assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) *Evaluation Standard 2—Equal access to services.* A DSU must ensure that individuals from minority backgrounds have equal access to VR services.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(1) *Employment outcomes.*

(i) *Performance Indicator 1.1.* The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(ii) *Performance Indicator 1.2.* Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iii) *Performance Indicator 1.3.* Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage.

(iv) *Performance Indicator 1.4.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(v) *Performance Indicator 1.5.* The average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report ''State Average Annual Pay'' for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who report their own income as the largest single source of economic support at the time they exit the VR program and the percentage who report their own income as the largest single source of support at the time they apply for VR services.

(2) *Equal access to services.*

(i) *Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) *General.*

(1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and

(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.*

(1)(i) The performance levels for Performance Indicators 1.1 through 1.6 are—

Performance indicator	Performance level by type of DSU	
	General/combined	Blind
1.1	Equal or exceed previous performance period	Same.
1.2	55.8%	68.9%
1.3	72.6%	35.4%
1.4	62.4%	89.0%
1.5	.52 (Ratio)	.59
1.6	53.0 (Math. Difference)	30.4

(ii) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for four of the six performance indicators in the evaluation standard, including meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4, and 1.5).

(2)(i) The performance level for Performance Indicator 2.1 is—

Performance indicator	Performance levels
2.1	.80 (Ratio)

(ii) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (2)(iii) of this section.

(iii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if fewer than 100 individuals from a minority population have exited the VR program during the reporting period, the DSU must describe the policies it has adopted or will adopt and the steps it has taken or will take to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA–911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of ''Exit the VR program'' under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at the time

they applied for VR services was ''personal income.''

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was ''personal income.''

(7) The number of individuals exiting the VR program who are individuals from a minority background.

(8) The number of non-minority individuals exiting the VR program.

(9) The number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(10) The number of non-minority individuals exiting the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA–911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (10) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. If a DSU fails to submit data that are valid, accurate, and in a consistent format within the 60-day period, the DSU must develop a program improvement plan pursuant to § 361.89(a).

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU must jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary may request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under § 361.86(a)(2), the Secretary and the DSU must jointly modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the current performance levels over a period of more than 1 year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Approved by the Office of Management and Budget under control number 1820–0508.)

(Authority: 29 U.S.C. 726(b) and (c))

[FR Doc. 00–13948 Filed 6–2–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Monday,
June 5, 2000

Part V

Department of Commerce

Economic Development Administration

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 000515144–0144–01]

RIN: 0610–ZA15

National Technical Assistance, Training, Research, and Evaluation—Request for Grant Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Request for Grant Proposals (RFP) upon availability of funds.

SUMMARY: As part of its mission to assist economically distressed areas, EDA promotes dissemination of quality, accessible, and timely information to economic development practitioners nationally. EDA is soliciting proposals for information dissemination projects as described herein. EDA issues this Notice to describe the conditions under which eligible applications for these projects will be accepted and selected for funding. Projects will be funded if acceptable proposals are received.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on June 16, 2000, at 10 a.m. EDT in the Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, Room 1412, at which time questions on these projects can be answered. Potential applicants are encouraged to provide written questions by June 14, 2000 (See **ADDRESSES** section below). Prospective applicants unable to attend this pre-proposal conference may participate by telephone conference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–4:30 EDT on June 15, 2000.

Proposals for funding under this program will be accepted through July 6, 2000, at one of the addresses provided below. Proposals received after 5 p.m. EDT, on July 6, 2000, will not be considered for funding.

By July 20, 2000, EDA will notify proposers whether or not they will be given further funding consideration. Each successful proponent will be invited to submit an Application for Federal Assistance, OMB Control Number 0610–0094. The completed application must be submitted to EDA by August 1, 2000. Projects will be funded no later than September 30, 2000.

ADDRESSES: 1. Proposals may be mailed to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230, or

2. Proposals may be hand-delivered to: John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, D.C. 20230, or

3. Proposals may be submitted via e-mail to *rntapubs@doc.gov.*

FOR FURTHER INFORMATION CONTACT: John J. McNamee (202) 482–4085; email: jmcnamee@doc.gov.

SUPPLEMENTARY INFORMATION:

I. Areas of Special Interest

A. Background

As part of its ongoing mission to assist economically distressed areas, EDA supports projects that disseminate information to economic development practitioners serving distressed communities nationally (see paragraph IV.C. for EDA's definition of distress).

Historically, these projects have consisted mainly of newsletters targeted to a national audience. At this time, EDA is soliciting proposals in order to:

- Continue serving the economic development information needs of distressed rural and urban areas;
- Take greater advantage of new technologies for information dissemination (including Internet, videoconferencing, e-mail, *etc.*); and
- Identify and provide information in new or emerging areas of economic development needed by practitioners serving distressed areas.

EDA anticipates funding a variety of information dissemination projects. These may include one-time projects of a year or less duration and/or multi-year projects. These projects may use printed or electronic media or a combination of both to disseminate economic development information. Current EDA information dissemination grantees are encouraged to submit proposals and will be evaluated based on the same criteria as all other proposals. Organizations or individuals may submit more than one proposal for consideration under this RFP.

B. Scope of Work

The successful applicants will:

(1) Undertake information dissemination activities targeted at a national audience of economic development practitioners working in America's distressed communities.

(2) Do one or more of the following:

- Identify and cultivate understanding of the causes of excessive unemployment, underemployment, low income, outmigration and/or other forms of economic distress in areas and regions of the Nation;
- Support the development and greater understanding of new economic development tools and national, State, and local programs designed to relieve economic distress;
- Promote knowledge and understanding of effective programs, projects and techniques that alleviate economic distress.

(3) Influence economic development outcomes by improving the quality, accessibility, and timeliness of critical information available to economic development practitioners.

C. Additional Requirements

(1) Proposed projects should not be primarily for the benefit of the grantee, narrowly focused organizations, or localized geographic areas.

(2) Grantees shall attend and participate in three EDA conferences each year. Locations and dates of the conferences attended are at EDA's discretion.

D. Cost

A total of $550,000 is available for all projects funded under this RFP. EDA anticipates funding multiple projects. Ordinarily, the applicant is expected to provide a 50% non-federal share of project costs. However, EDA may reduce or waive the required 50% matching share of the total project costs, provided the applicant can demonstrate: (1) the project is not feasible without, and the project merits such a reduction or waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50% non-federal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient, or (4) the requirements of 13 CFR 301.4(b) (table) are satisfied (See 13 CFR 307.11; 64 FR 69878).

E. Timing

Awards made under this RFP are for up to one year. However, some of these awards may be eligible for multi-year funding, i.e., renewable for two additional years after the initial award is made, at the same or lower annual project cost, subject to funding availability, satisfactory performance under the initial or subsequent award, and at the sole discretion of EDA. The intent of this renewal option is to provide grantees somewhat more predictable funding necessary to

develop, implement, and improve their information dissemination projects. EDA, at its sole discretion, will make the final determination of whether an award may be renewable for two additional years, based on the above-described criteria, at the time of project approval.

II. How To Apply

A. Eligible Applicants

See EDA's interim final rule and final rule at 13 CFR 300.2 (64 FR 5347, 5352; 64 CFR 69868). Eligible applicants are as follows: institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals; areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states.

B. Proposal Submission Procedures

Each proposal submitted must include:

(1) A description of how the researcher(s) intend(s) to carry out the scope of work (not to exceed 10 pages in length). This description must address the following issues:

- Identify and describe the target audience, and the reason(s) why the proposed information dissemination activity is necessary;
- Describe how the organization plans to achieve the proposed target audience penetration;
- Describe the types of information that will be disseminated;
- Justify why the proposed activity should be federally funded;
- Describe the economic development outcomes or activities that will be influenced by the information dissemination efforts;
- For activities proposed for multi-year funding (up to three years maximum), justify the need for such funding.

(2) A proposed budget and accompanying explanation;

(3) Resumes/qualifications of key staff (not to exceed two pages per individual, with an additional 2 pages allowed for a single summary description of all organizations/consultants named in the proposal), and

(4) A proposed time line for implementation of the project.

E-mailed proposals should be in WordPerfect for Windows or .pdf (Adobe) format. EDA will not accept proposals submitted by FAX. Proposals received after 5 p.m. EDT on July 6, 2000, at the street or email addresses provided in the **ADDRESSES** section above, will not be considered.

III. Selection Process and Evaluation Criteria

All proposals must meet EDA's statutory and regulatory requirements. Proposals will receive initial review by EDA to assure that they meet all requirements of this RFP and 13 CFR Chapter III (64 FR 5347, 5357; 64 FR 69868, 69874), including eligibility and relevance to the specified project as described herein. EDA's general selection process and criteria are set out in 13 CFR 304.1, 304.2 (64 FR 5347,5357; 64 FR 69868, 69874–69875) and current 13 CFR 307.10 (§ 307.8 in the interim rule), (64 FR 5347, 5429; 64 FR 69868, 69878). Proposals that do not substantially address all items required or that exceed the page limitations of Part II.B. of this RFP, will be ruled nonresponsive and not considered for funding. Proposals that meet these requirements will be evaluated by a review panel comprised of at least three members. EDA will carry out its selection process using the following criteria:

(1) The quality of a proposal's response to the Scope of Work and Additional Requirements described in Parts I.B. and I.C. above;

(2) The ability of the prospective applicant to successfully carry out the proposed activities; and

(3) Cost to the Federal government.

If a proposal is selected, EDA will provide the proponent with an Application for Federal Assistance (OMB Control Number 0610–0094). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction act unless that collection of information displays a currently valid OMB Control Number.

IV. Additional Information

A. Authority

The Public Works and Economic Development Act of 1965, as amended (P. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub.L. 105–393) (PWEDA) authorizes EDA to make grants for training, research, and technical assistance, including grants for program evaluation and project impact analyses, that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (42 U.S.C. 3147, 207). Public Law 106–113 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development Technical Assistance

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, § 307 (64 FR 5347; 64 FR 69867).

EDA assistance is focused on areas experiencing significant economic distress, defined principally as per capita income of 80 percent or less of the national average; or an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average; or a special need, as determined by EDA.

D. Website

See 64 FR 3763–3769 for additional information and requirements (available on the Internet at http://www.doc.gov/eda/html/notice.htm, under the heading ''Research, Evaluation, and National Technical Assistance: Request for Grant Proposals.'' This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: May 30, 2000.

David L. McIlwain,

Acting Assistant Secretary for Economic Development.

[FR Doc. 00–13964 Filed 6–2–00; 8:45 am]

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Federal Register

Vol. 65, No. 108

Monday, June 5, 2000

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S.J. Res. 44/P.L. 106–205

Supporting the Day of Honor 2000 to honor and recognize the service of minority veterans in the United States Armed Forces during World War II. (May 26, 2000; 114 Stat. 312)

H.R. 154/P.L. 106–206

To allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming activities on Federal land, and for other purposes. (May 26, 2000; 114 Stat. 314)

H.R. 371/P.L. 106–207

Hmong Veterans' Naturalization Act of 2000 (May 26, 2000; 114 Stat. 316)

H.R. 834/P.L. 106–208

National Historic Preservation Act Amendments of 2000 (May 26, 2000; 114 Stat. 318)

H.R. 1377/P.L. 106–209

To designate the facility of the United States Postal Service located at 9308 South Chicago Avenue, Chicago, Illinois, as the "John J. Buchanan Post Office Building". (May 26, 2000; 114 Stat. 320)

H.R. 1832/P.L. 106–210

Muhammad Ali Boxing Reform Act (May 26, 2000; 114 Stat. 321)

H.R. 3629/P.L. 106–211

To amend the Higher Education Act of 1965 to improve the program for American Indian Tribal Colleges and Universities under part A of title III. (May 26, 2000; 114 Stat. 330)

H.R. 3707/P.L. 106–212

American Institute in Taiwan Facilities Enhancement Act (May 26, 2000; 114 Stat. 332)

S. 1836/P.L. 106–213

To extend the deadline for commencement of construction of a hydroelectric project in the State of Alabama. (May 26, 2000; 114 Stat. 334)

Last List May 25, 2000

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–042–00013–7)	37.00	Jan. 1, 2000
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–042–00015–3)	18.00	Jan. 1, 2000
1200–1599	(869–042–00016–1)	44.00	Jan. 1, 2000
1600–1899	(869–042–00017–0)	61.00	Jan. 1, 2000
1900–1939	(869–042–00018–8)	21.00	Jan. 1, 2000
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–042–00023–4)	46.00	Jan. 1, 2000
200–End	(869–042–00024–2)	44.00	Jan. 1, 2000
10 Parts:			
1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–042–00026–9)	38.00	Jan. 1, 2000
200–499	(869–042–00027–7)	38.00	Jan. 1, 2000
500–End	(869–042–00028–5)	48.00	Jan. 1, 2000
11	(869–042–00029–3)	23.00	Jan. 1, 2000
12 Parts:			
1–199	(869–042–00030–7)	18.00	Jan. 1, 2000
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–042–00032–3)	45.00	Jan. 1, 2000
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–042–00034–0)	26.00	Jan. 1, 2000
600–End	(869–042–00035–8)	53.00	Jan. 1, 2000
13	(869–042–00036–6)	35.00	Jan. 1, 2000
14 Parts:			
1–59	(869–042–00037–4)	58.00	Jan. 1, 2000
60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–1)	17.00	[4] Jan. 1, 2000
200–1199	(869–042–00040–4)	29.00	Jan. 1, 2000
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–042–00043–9)	45.00	Jan. 1, 2000
800–End	(869–042–00044–7)	26.00	Jan. 1, 2000
16 Parts:			
0–999	(869–042–00045–5)	33.00	Jan. 1, 2000
1000–End	(869–042–00046–3)	43.00	Jan. 1, 2000
17 Parts:			
*1–199	(869–042–00048–0)	32.00	Apr. 1, 2000
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	18.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
*1300–End	(869–042–00067–6)	15.00	Apr. 1, 2000
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
***25**	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[6] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
*40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[7] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
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	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[7] July 1, 1999
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
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	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–6)	27.00	Oct. 1, 1999
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
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 January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.