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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG58

List of Approved Spent Fuel Storage Casks: HI–STAR 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the Holtec International HI–STAR 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and clarifications, editorial corrections, and other minor changes to cask design information and drawings. The CoC was revised to require users to prepare written acceptance tests and a maintenance program consistent with the technical basis described in the Safety Analysis Report (SAR). In addition, the amendment includes two minor changes to the HI–STAR 100 listing in the regulations. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license.

DATES: The final rule is effective December 26, 2000, unless significant adverse comments are received by November 13, 2000. If adverse comments are received, a timely notice of withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (*http://ruleforumllnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov*).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000 the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found in ADAMS under Accession No. ML003726991. For more information, contact the NRC Public Document Room reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail GEG1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule on September 3, 1999 (64 FR 48274), that approved the HI–STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued Certificate of Compliance Number (CoC No.) 1008.

Discussion

On November 24, 1999, Holtec International (the certificate holder), submitted an application to the NRC to amend CoC No. 1008 and supplemented the application on February 4, 18, and 28, March 2, 16, and 31, and May 23, 2000. Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2)

addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container that can contain fuel assemblies with known or suspected defects, such as ruptured fuel rods, severed rods, loose pellets; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.,* reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoC's, in particular, the Hi-STORM 100.

In addition, the amendment includes two minor changes to the HI–STAR 100 listing in § 72.214 of the regulations. First, the ''Certification Expiration Date'' is changed to ''Certificate Expiration Date.'' Second, ''Final'' is added to the title of the SAR. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license. These changes are described in the Revision History for Amendment 1 (CoC, Appendices A and B). The NRC staff performed a safety evaluation of the amendment request and found that the changes provide reasonable assurance that the spent fuel can be stored safely and in compliance with 10 CFR Part 72. The NRC staff documented its review and evaluation in a Safety Evaluation Report. This direct final rule will revise the Holtec International HI–STAR 100 cask system listing within the list of NRC-approved casks for spent fuel storage in § 72.214 by adding Amendment No. 1 to CoC No. 1008. The amended HI-STAR 100 cask system, when used under the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety will continue to be ensured. Amendment No. 1 applies to any HI-STAR 100 cask loaded after December 26, 2000.

Amendment No. 1 to CoC No. 1008 and the underlying SER, and the Environmental Assessment and Finding of No Significant Impact are available for inspection and comment through September 21, 2000, at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000, the NRC Public Document Room wil be located at 11555 Rockville Pike, Rockvill, MD. Single copies of the CoC and SER may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6195, email *GEG1@nrc.gov.* An electronic copy of the proposed CoC and preliminary SER can be found in the NRC's Electronic Reading Room *http://www.nrc.gov/NRC/ADAMS/index.html* under Accession No. ML003726991.

Discussion of Amendments by Section

§ 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1008 will be revised indicating the addition of Amendment No. 1 and its effective date. Also, the ''Certification Expiration Date'' is changed to ''Certificate Expiration Date,'' and ''Final'' is added to the title of the safety analysis report.

Procedural Background

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1008 and does not include other aspects of the HI–STAR 100 cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. This amendment will become effective on December 26, 2000. However, if the NRC receives significant adverse comments by November 13, 2000, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendments. These comments will be addressed in a subsequent final rule. Absent significant modification to the revisions requiring republication, the NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES,** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will add Amendment No. 1 to the HI–STAR 100 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC.

Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoCs, in particular the HI–STORM 100.

In addition, the amendment includes two minor changes to HI–STAR 100 listing in § 72.214 of the regulations. First, ''Certification Expiration Date'' is changed to ''Certificate Expiration

Date.'' Second, ''Final'' is added to the title of the safety analysis report. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC through September 21, 2000. Beginning September 26, 2000, the NRC Public Document Room will located at 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6195, email *GEG1@nrc.gov.* An electronic copy of the proposed environmental assessment and finding of no significant impact can be found in the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec International HI–STAR 100 cask system listing within the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Nuclear Regulatory Commission (NRC) issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's Certificate of Compliance, and the conditions of the general license are met.

A list of NRC-approved cask system designs is contained in § 72.214. On September 3, 1999 (64 FR 48274), the NRC issued an amendment to Part 72 that approved the HI–STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1008. On November 24, 1999, the certificate holder submitted an application to the NRC to amend the Technical Specifications and CoC No. 1008. Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. In addition, the amendment includes two minor changes to HI–STAR 100 listing in § 72.214 of the regulations. First, the ''Certification Expiration Date'' is changed to ''Certificate Expiration Date.'' Second, ''Final'' is added to the title of the safety analysis report. This amendment will allow holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system.

This rule will permit manufacture of casks under the revisions in Amendment 1. The alternative to this action is to withhold approval of this amended cask system design and give a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Conducting site-specific reviews would be in conflict with the Nuclear Waste Policy Act of 1982, as amended (NWPA), which directed to the NRC to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the NRC. This alternative does not foster competition because it would tend to favor new vendors without cause and would arbitrarily limit the choice of cask system designs available to power reactor licensees.

Approval of the direct final rule would eliminate the problems described above and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping

requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1008 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1008.

Initial Certificate Effective Date: October 4, 1999.

Amendment Number 1 Effective Date: December 26, 2000.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STAR 100 Cask System.

Docket Number: 72–1008.

Certificate Expiration Date: October 4, 2019.

Model Number: HI–STAR 100.

* * * * *

Dated at Rockville, Maryland, this 20th day of September, 2000.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 00–25913 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Arrangement of Transportation of Freight and Cargo

AGENCY: Small Business Administration.

ACTION: Final rule; clarification.

SUMMARY: This document clarifies SBA's final rule revising the small business size standard for Standard Industrial Classification (SIC) Code 4731, Arrangement of Transportation of Freight and Cargo. On May 15, 2000, SBA established a new table of size standards based on the North American Industry Classification System (NAICS) which replaces the SIC code table on October 1, 2000. Because SBA issued the final rule concerning SIC 4731 after adopting the new NAICS table of size standards, this action updates the NAICS size standards table to reflect the changes for the Freight Transportation Arrangement industry. This action also inserts into the NAICS table a Subsector for Mining Support Activities which was inadvertently excluded from the May 15, 2000 publication.

DATES: This rule is effective on October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION:

Freight Transportation Arrangements

On August 9, 2000, SBA issued a final rule in the **Federal Register**, (65 FR 48601) that revised the small business size standard for SIC Code 4731, Arrangement of Transportation of Freight and Cargo. SBA revised the standard from $18.5 million to $5.0 million in average annual receipts effective September 8, 2000. However, SBA retained the $18.5 million size standard for Non-Vessel Owning Common Carriers and Household Goods Forwarders. SBA, in that same rule, also changed how it calculates the average annuals receipts of freight forwarders and custom brokers for purposes of determining eligibility for Federal small business programs.

In that final rule, SBA referred to the effect that changing the size standard for SIC 4731 would have on the NAICS codes. The industries covered under SIC Code 4731 relate to industries covered under NAICS Code 488510 (Freight Transportation Arrangement) and NAICS Code 541614 (Process, Physical Distribution, and Logistics Consulting Services). SBA detailed the change at 65 FR 48603, ''Reclassification of Activities Under the North American Industry Classification System.'' The table below summarizes how SIC 4731 corresponds to the NAICS.

SIC 4731	NAICS description	NAICS code	Size standard
Arrangement of Transportation of Freight and Cargo (Except Freight Rate Auditors and (Tariff Consultants).	Freight Arrangement Transportation.	488510	$5.0 million* Except: Non-Vessel Owning Common Carriers and Household Goods Forwarders.....$18.5 million
Freight Rate Auditors and Tariff Consultants	Process, Physical Distribution, and Logistics Consulting.	541614	$5.0 million

*As measured by total revenues, but excluding funds received in trust for an unaffiliated third party.

Support Activities for Mining

When SBA published the NAICS table in the May 15, 2000, **Federal Register**, Subsector 213, Support Activities for Mining, was inadvertently left out of the published table. SBA is now correcting this oversight by adding the Subsector to the NAICS table.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Report and record keeping requirement, Small business.

For reasons stated in the preamble, SBA is amending 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. In § 121.201, amend the table ''Small Business Size Standards by NAICS Industry'' as follows:

a. Under the heading Sector 21—Mining, a new heading is added reading ''Subsector 213—Support Activities for Mining'' below the entry for 212399, All Other Nonmetallic Mineral Mining and above the entry for 213111, Drilling Oil and Gas Wells;

b. Under the heading Sectors 48–49—Transportation, Subsector 488—Support Activities for Transportation, revise the entry for 488510.

The revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SIZE STANDARD BY NAICS INDUSTRY

NAICS codes	Description (N.E.C. = Not Elsewhere Classified)	Size standards in number of employees or million of dollars
*	*	*
Sector 21—Mining		
*	*	*
212399	All Other Nonmetallic Mineral Mining	500
Subsector 213—Support Activities for Mining		
*	*	*
Sector 48–49—Transportation		
*	*	*
Subsector 488—Support Activities for Transportation		
*	*	*
488510	Freight Transportation Arrangement	[10] $5.0
EXCEPT	Non-Vessel Owning Common Carriers and Household Goods Forwarders	$18.5
*	*	*

c. Revise footnote 10 to read as follows:

Footnotes:

* * * * *

10. *NAICS codes 488510 (part), 531210, 541810, 561510* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: October 3, 2000.

Gary Jackson,

Assistant Administrator for Size Standards.

[FR Doc. 00–25991 Filed 10–10–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM176; Special Conditions No. 25–165–SC]

Special Conditions: British Aerospace Jetstream 4101 Series Airplanes; Seats with Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for British Aerospace (BAE) Systems Jetstream Model 4101 series airplanes, modified by BAE Systems to include seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 28, 2000. Comments must be received on or before November 13, 2000.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

Attention: Rules Docket No. NM176, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. NM176'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1175; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number identified above and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered. The special conditions may be changed in light of the comments received.

All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number NM176.'' The postcard will be date stamped and returned to the commenter.

Background

On April 28, 1999, British Aerospace Systems applied for a change to Type Certificate No. A41NM for the installation of an Amsafe inflatable airbag-seatbelt for the front row passenger seats in the British Aerospace System Jetstream 4101 series airplane. The Model 4101 series airplane is a straight-wing, conventional-tail, twin-engine, turboprop-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to the fixed mounted airbag, but in this case the airbag is integrated into the lapbelt, and deploys away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35″ from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified. In addition HIC is the only available quantifiable measure of head injury protection. Therefore, the FAA will require that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because § 25.562, § 25.785, and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy absorbing pads, for example, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems, and must be relied upon to activate properly when needed, as opposed to an energy absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. BAE Systems must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered

necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–48 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a larger range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position may not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if a pregnant woman occupies the seat, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Finally, it should be noted that the special conditions are certification requirements applied to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of § 21.101, BAE Systems must show that the Model 4101 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A41NM are as follows: Amendments 25–1 through 25–66 with exceptions. The U.S. type certification basis for the Model 4101 is established in accordance with §§ 21.29 and 21.17, and the type certification application date to the United Kingdom Civil Aviation Authority. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A41NM.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 4101 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4101 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 4101 series airplanes will incorporate the following novel or unusual design features. BAE Systems plans to install an Amsafe Inc, inflatable lapbelt on the front row passenger seats

of the Model 4101 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similarly to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the BAE Model 4101 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Model 4101 series airplanes. Should BAE Systems apply at a later date for modification of any other model included on Type Certificate No. A41NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the BAE Systems Model 4101 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Immediate Adoption of Special Conditions

The substance of these special conditions has been subject to the notice and comment period in two prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for British Aerospace (BAE) Systems Model 4101 series airplanes equipped with Amsafe inflatable lapbelts.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant, regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment, considering the requirements of Special Conditions No. 25–NM–45, issued July 9, 1991, and Special Conditions No. 25–NM–45A, issued November 8, 1994, concerning cabin aisle width.

9. The system must be protected from lightning and high-intensity radiated fields (HIRF). The threats specified in Special Condition No. 25–ANM–48 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of

complying with HIRF requirements, the inflatable lapbelt system is considered a critical system if its deployment could have a hazardous effect on the airplane; otherwise it is considered an essential system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on September 28, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–26016 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–286–AD; Amendment 39–11927; AD 2000–20–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This action requires repetitive inspections of the cargo loader system in the forward and aft cargo compartments to detect discrepancies, and corrective actions, if necessary. This action is necessary to detect and correct such discrepancies, which could result in reduced structural integrity of the fuselage and consequent cabin depressurization.

DATES: Effective October 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–286–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, on certain Boeing Model 757–200 series airplanes, damage has been detected to the fiberglass pan and fuselage frames located in the forward and aft cargo compartments. This damage has been attributed to incorrect operation of the cargo loader system and subsequent wear damage completely through the fiberglass pan, and in some cases, to the adjacent fuselage frames. This condition, if not corrected, could result in reduced structural integrity of the airplane fuselage and consequent cabin depressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000, which describes procedures for repetitive inspections of the cargo loader system in the forward and aft cargo compartments to detect discrepancies (i.e., improper operation, wear damage of the fiberglass pan and fuselage frames), and corrective actions, if necessary.

The corrective actions include procedures for repair of the cargo loader system if incorrectly installed or deactivation of the system if the fiberglass pan is worn to the extent that fibers are exposed; follow-on inspection of the fuselage frames if there is a hole worn through the fiberglass pan anywhere within the two-inches forward or aft of any frame location; repair or replacement of the damaged pan; and repair of the fuselage frames if damaged and damage is within the limits specified in the structural repair manual, as described in the alert service bulletin. Following accomplishment of the corrective actions, the alert service bulletin recommends testing the cargo loader system for proper operation. The alert service bulletin also contains instructions to contact the manufacturer for reactivation of the cargo loader system and disposition of certain inspection and repair procedures.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin permits reactivation of the cargo loader system after contacting the manufacturer for disposition of inspection and repair procedures, this AD requires reactivation of the system and disposition of the inspection and repair procedures be accomplished in accordance with a method approved by the FAA.

Although the alert service bulletin specifies accomplishment of inspections, this AD refers to those inspections as detailed visual inspections. The FAA finds that ''detailed visual inspection'' is the appropriate terminology for the inspections described in the service bulletin. Additionally, a definition of a detailed visual inspection is included in Note 2 of this proposed AD.

The alert service bulletin also specifies repetitive inspections at intervals not to exceed 300 flight cycles

provided no damage is detected following accomplishment of the initial inspection. However, paragraph (a) of this AD also requires accomplishment of the repetitive inspections if the cargo loader system is reactivated after damage is repaired.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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 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 rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–286–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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:

2000–20–16 **Boeing:** Amendment 39–11927. Docket 2000–NM–286–AD.

Applicability: Model 757–200 series airplanes, certificated in any category, having Air Cargo Equipment cargo loader systems.

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 (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 detect and correct discrepancies of the cargo loader system in the forward and aft cargo compartments, which could result in reduced structural integrity of the fuselage and consequent cabin depressurization, accomplish the following:

Repetitive Inspections

(a) Within 60 days or 300 flight cycles after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection of the cargo loader system in the forward and aft cargo compartments to detect discrepancies (*i.e.,* improper operation, wear damage of the fiberglass pan and fuselage frames), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000. If no discrepancies are detected, or the cargo loader system is reactivated after repair of damage, repeat the inspection thereafter at intervals not to exceed 300 flight cycles.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(b) If any discrepancies (*i.e.,* improper operation, wear damage of the fiberglass pan or fuselage frames), are detected during any inspection required by paragraph (a) of this AD, before further flight: Repair the discrepancies and deactivate the cargo loader system in accordance with Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000. Further, if the damage to the

fuselage frame(s) is greater than the limits shown in the 757 Structural Repair Manual, accomplish the repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Reactivate the cargo loader system only in accordance with a method 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.

Alternative Methods of Compliance

(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, 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 3: 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

(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.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757–25A0233, dated August 10, 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.

Effective Date

(f) This amendment becomes effective on October 26, 2000.

Issued in Renton, Washington, on September 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25532 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–207–AD; Amendment 39–11926; AD 2000–20–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that requires a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, this amendment requires a modification that would allow the inspection to be deferred for a certain period of time. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane.

DATES: Effective November 15, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: 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 Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30033). That action proposed to require a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, that action proposed to require a modification that would allow the inspection to be deferred for a certain period of time.

Comment Received

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

Request To Revise Compliance Times

The commenter questions the compliance times specified in the proposed AD. The commenter notes that there are small discrepancies between the compliance thresholds recommended in the referenced service bulletins for Airbus Model A300 B2, B4–100, and B4–600 series airplanes, and the thresholds specified by the proposed AD. The commenter suggests that it would be preferable for the compliance times in the AD to be in line with those in the service bulletins, since this would avoid confusion by operators and reduce the number of questions that may be raised.

The FAA concurs. For the reasons stated in the proposed AD, the FAA specified fixed compliance times for accomplishment of the required actions, rather than permitting use of the ''adjustment-for-range'' formula for calculating compliance times. During discussions with the manufacturer to determine an interim method of calculating the fixed compliance times, flight cycle thresholds and intervals for certain models were recommended for reduction from those in the service bulletins, based on the average flight times of those models. Subsequently, a revised method for calculation of such fixed compliance times was defined by the manufacturer. This method allows use of the flight cycle thresholds and intervals specified in the referenced service bulletins.

The FAA has determined that, consistent with the manufacturer's revised method for calculation of fixed compliance times, the flight cycle thresholds and intervals recommended in the referenced service bulletins constitute acceptable compliance times for this AD. The final rule has been

revised accordingly. Because the flight cycle compliance times for certain airplane models have been increased rather than reduced, and the flight hour compliance times are unchanged, such revision imposes no additional restrictions on operators.

Conclusion

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

Cost Impact

The FAA estimates that 85 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required HFEC inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $5,100, or $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification rather than the repetitive inspections, it will take approximately 3 work hours per airplane to accomplish. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $15,300, or $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. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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:

2000–20–15 **Airbus Industrie:** Amendment 39–11926. Docket 98–NM–207–AD.

Applicability: Model A300 and A300–600 series airplanes, on which Airbus Modification 11525 has not been accomplished; 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 (h) 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 detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the stiffeners at stringer 27 of the rear fitting of fuselage frame FR40, left and right, in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this AD.

(1) For Model A300 B2 series airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 11,600 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 14,300 total flight hours, or within 3,800 flight hours after the effective date of this AD, whichever occurs later.

(2) For Model A300 B2 series airplanes that have accumulated 26,000 or more total flight cycles as of the effective date of this AD: Inspect within 2,200 flight cycles or 2,800 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–100 series airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Prior to the accumulation of 9,200 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,700 total flight hours, or within 5,800 flight hours after the effective date of this AD, whichever occurs later.

(4) For Model A300 B4–100 series airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,800 flight cycles or 3,400 flight hours after the effective date of this AD, whichever occurs first.

(5) For Model A300 B4–200 series airplanes that have accumulated less than 14,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(5)(i) and (a)(5)(ii) of this AD.

(i) Prior to the accumulation of 8,300 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 17,200 total flight hours, or within 6,200 flight hours after the effective date of this AD, whichever occurs later.

(6) For Model A300 B4–200 series airplanes that have accumulated 14,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,700 flight cycles or 3,500 flight hours after the effective date of this AD, whichever occurs first.

(7) For Model A300–600 series airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this AD.

(i) Prior to the accumulation of 6,200 total flight cycles, or within 2,700 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,100 total flight hours, or within 7,000 flight hours after the effective date of this AD, whichever occurs later.

(8) For Model A300–600 series airplanes that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,400 flight cycles or 3,600 flight hours after the effective date of this AD, whichever occurs first.

Repetitive Inspections

(b) If no crack is detected during the initial inspection required by paragraph (a) of this AD, except as provided by paragraph (e) of this AD, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Repeat at intervals not to exceed 2,200 flight cycles or 2,700 flight hours, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Repeat at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Repeat at intervals not to exceed 1,700 flight cycles or 3,500 flight hours, whichever occurs first.

(4) For Model A300–600 series airplanes: Repeat at intervals not to exceed 1,400 flight cycles or 3,400 flight hours, whichever occurs first.

Repair Cracking Found During Inspections

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is less than 0.787 inches long, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 44,500 flight cycles or 54,600 flight hours after accomplishment of the repair, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 35,200 flight cycles or 56,700 flight hours after accomplishment of the repair, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 31,900 flight cycles or 66,100 flight hours after accomplishment of the repair, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 23,700 flight cycles or 57,500 flight hours after accomplishment of the repair, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is 0.787 inches long or more, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Deferral of Repetitive Inspections by Modification

(e) In lieu of accomplishing the requirements of paragraph (b) of this AD, prior to further flight after accomplishing the inspection required by paragraph (a) of this AD, modify the rear fitting at stringer 27 at FR40 of the center fuselage in accordance with Airbus Service Bulletin A300–53–0333, dated November 24, 1997 (Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6076, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Following accomplishment of the modification, perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 59,600 flight cycles or 73,100 flight hours after accomplishment of the modification, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 47,100 flight cycles or 75,900 flight hours after accomplishment of the modification, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 42,700 flight cycles or 88,400 flight hours after accomplishment of the modification, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 31,700 flight cycles or 76,800 flight hours after accomplishment of the modification, whichever occurs first.

Follow-on Action if No Cracking Is Found During Certain Inspections

(f) If no crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, contact the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent) for the next inspection time(s), and repeat the inspection(s) thereafter at those times.

Repair for Cracking Found During a Certain Inspection

(g) If any crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) 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

(j) Except as required by paragraphs (d), (f), and (g) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997; Airbus Service Bulletin A300–57–6075, dated November 24, 1997; Airbus Service Bulletin A300–53–0333, dated November 24, 1997; or Airbus Service Bulletin A300–57–6076, dated November 24, 1997; as applicable. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–028–242 (B), dated January 28, 1998.

(k) This amendment becomes effective on November 15, 2000.

Issued in Renton, Washington, on September 29, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–25533 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–1]

RIN 2120–AA66

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 7, 2000 (65 FR 36060). In that rule, the legal description of the San Francisco, CA, Class B airspace, Area E, contained an inadvertent error that failed to exclude airspace within the Travis Air Force (AFB) approach control area. This action corrects that error.

EFFECTIVE DATE: October 11, 2000.

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

SUPPLEMENTARY INFORMATION: On June 7, 2000, Airspace Docket No. 97–AWA–1, FR Doc. 00–14046, was published amending the legal description of the San Francisco, CA, Class B airspace area. This rule included a legal description of the San Francisco, CA, Area E airspace that included a small area within the Travis AFB approach control area, which should have been omitted. This action excludes that airspace from the San Francisco Class B airspace area, thereby correcting this error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the San Francisco, CA, Class B airspace, Area E, as published in the **Federal Register** on June 7, 2000 (65 FR 36060); FR Doc. 00–14046, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 36064, in column 3, in the legal description of the San Francisco, CA, Class B airspace, correct Area E to read as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Francisco, CA

* * * * *

Boundaries.

* * * * *

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 15-mile DME point on the SFO VOR/DME 277° radial thence counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and southeast along the SFO VOR/DME 167° radial to and counterclockwise along the 20-mile DME arc of the SFO VOR/DME to and northeast along the Sausalito VORTAC 052° radial, to and clockwise along the 25-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 227° radial to and clockwise along the 20-mile DME arc to and northeast along the SFO VOR/DME 277° radial to the point of beginning, excluding the airspace north of lat 38°00′00″.

* * * * *

Issued in Washington, DC, on September 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–25643 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

14 CFR Parts 91, 93, 121 and 135

Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area; Modification of the Dimensions of the Grand Canyon National Park Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of a request for stay of compliance date.

SUMMARY: On April 4, 2000, the FAA published two final rules for Grand Canyon National Park (GCNP) limiting the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA) and modifying the airspace of the SFRA. One rule limited commercial air tour operations of each operator, the other redefined the SFRA airspace. A Notice of Availability of commercial routes in the GCNP SFRA also was issued on the same day setting forth new routes available. The Commercial Air Tour allocations final rule was effective on May 4, 2000. The new routes and airspace modifications become effective December 1, 2000. In July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the rules. This document informs the public of the FAA disposition of this request for a stay of the compliance date for the final rules.

DATES: Effective: October 11, 2000.

ADDRESSES: You may view a copy of the final rules, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area and Modification for the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov,* by selecting docket numbers FAA–99–5926 and FAA–99–5927. You may also review the public dockets on these regulations in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation. 7th Ave., SW, Room 401, Washington, DC, 20590.

As an alternative, you may search the **Federal Register's** Internet site at http://www.access.gpo.gov/su__docs for access to the final rules.

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680.

FOR FURTHER INFORMATION CONTACT: Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; telephone: (202) 493–4981.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule because effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice are scheduled to become effective December 1, 2000. The implementation of the Air Space Modification final rule and the new routes was delayed to provide the air

tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplementary Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, the United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, the Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the Federal Respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion.

Petitions

The Air Tour Providers requested that the FAA stay the effective date of the Air Space Modification Final Rule and suspend the effectiveness of the Commercial Air Tour Limitation final rule ''to avoid imposing additional irreparable harm to the Air Tour Providers.'' Motion at 7. The Air Tour Providers also requested that the stay continue pending the outcome of the judicial proceeding currently before the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Air Tour Providers claim that the four-part test elucidated in *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) applies to the FAA and thus, based on this test the FAA should grant the motion for stay. In *Washington Metropolitan,* the Court specified the following four factors that it must look at when considering whether to grant a stay pending review. Those factors are as follows: (a) The likelihood that the moving party will prevail on the merits; (b) the prospect of irreparable injury to the moving party if relief is withheld; (c) the possibility of harm to other parties if relief is granted; and (d) the public interest.

The Air Tour Providers claimed that there is a substantial likelihood that they will prevail on the merits because Air Tour Providers will suffer great harm through these rules. Motion at 8. Additionally, the Air Tour Providers argued that the FAA's actions in issuing the final rules were arbitrary and capricious for the following reasons: (1) The goal of ''natural quiet'' has been achieved and thus these final rules are unnecessary, Motion at 9; (2) the agencies offered no ''reasoned analysis'' for ''abandon[ing] the definition of 'natural quiet' they have used since the Overflights Act was enacted, in 1987, substituting a 'detectability' standard for the 'noticeability standard,' '' Motion at 9–10; (3) the agencies failed to distinguish between aircraft sound generated by commercial aircraft and that generated by other aircraft (military, recreational), Motion at 10; (4) the agencies ''failed to develop quiet technology standards for the Grand Canyon or to use the existing quiet technology incentive route,'' Motion at 9–10; (5) the agencies have ''ignor[ed] the issue of safety and abandon[ed] existing rules that ensure aircraft safety,'' Motion at 11; (6) the agencies' failed to ''accommodate the needs of (the elderly, disabled and mobility impaired)'', Motion at 12; (7) the agencies failed to use current data to impose the flight caps, Motion at 12; (8) the agencies relied on a scientifically invalid computer sound model, Motion at 13; (9) the agencies created an exemption to ''protect the economic interest of the Hualapai (sic) * * * while ignoring the economic interests of the Air Tour Providers,'' Motion at 13. The Air Tour Providers also maintained that the agencies' actions violate the Regulatory Flexibility Act (RFA) by calculating the costs to the recreational air tour operators using inadequate data; asserting that operators can offset their losses by raising prices; failing to analyze the costs to recreational air tour passengers; overestimating the benefits to ground visitors; and failing to minimize the economic impact of the final rules. Motion at 14–16.

Additionally, the Air Tour Providers argued that their economic losses are irreparable because the loss threatens the very existence of their business and deprives them of their constitutional rights. Motion at 17–19. The Air Tour Providers further maintained that the agencies would not be harmed if the stay is granted since ''natural quiet'' has already been achieved. Motion at 19. Finally, the Air Tour Providers stated that the public interest strongly favors granting the stay since the ''Final Rules deal with sound that the public cannot hear'' thus, the ''public interest in 'natural quiet' at the Grand Canyon is protected.'' Motion at 19–20. Also, under the public interest prong of the *Washington Metropolitan* test, the Air Tour Providers argued that the sudden massive economic losses would result in significant losses to the local economy. Motion at 20. Additionally, the Air Tour Providers maintained that because the elderly, disabled or mobility-impaired individuals who visit the Grand Canyon by recreational air tour will be ''specifically and unfairly burdened by the Final Rules, the public interest weighs heavily in favor of staying the Final Rules.'' Motion at 21. The Air Tour Providers attached statements from air tour operators, an alternative acoustical analysis, and an alternative economic analysis to support their contentions.

The Hualapai Indian Tribe (Hualapai) submitted its opposition to the Air Tour Providers' request to stay the final rules arguing that the request is an ''untimely request to the Administrator for reconsideration of the final rule.'' Hualapai Opposition at 1. The Hualapai further argued that the fact that the Air Tour Providers waited three months after the effective date of the final rules to request a stay from the Administrator ''strongly indicates the lack of sufficient harm to warrant expedited consideration of the Stay Request, much less to support a stay.'' Hualapai Opposition at 2. The Hualapai maintained that the only way of staying the rules is through the reconsideration provision because there is not other applicable regulation ''for the issuance of a stay in FAA's procedures for rulemaking.'' Hualapai Opposition at 2. Furthermore, the Hualapai argued that the FAA is ''without power to reconsider (and stay) its decision now because the time for reconsideration (and a stay) ran several months before the Air Tour Providers submitted their Stay Request to the Administrator.'' Hualapai Opposition at 4.

The Air Tour Providers replied to the Hualapai Opposition on August 24, 2000, arguing that the Hualapai were not a party to this proceeding and did not have standing to oppose this request. Additionally, the Air Tour Providers stated that the Hualapai Tribe erred in stating that the Air Tour Providers had failed to demonstrate that they meet the irreparable harm standard set forth in *Washington Metropolitan.* The Air Tour Providers argued that they ''Demonstrated conclusively that the Final Rules have caused them irreparable harm, including: (i) The imminent closure of several of the air tour providers' businesses; (ii) the severe and permanent downsizing of other air tour providers' businesses; (iii) the permanent, and irreparable interference with air tour providers' contractual relationships with their domestic and foreign booking agents; and (iv) the deprivation of the air tour providers' constitutional rights under the Equal Protection component of the Fifth Amendment.'' Reply to Hualapai at 2.

Additionally, the Air Tour Providers took issue with the Hualapai's recharacterization of the Air Tour Providers' request, arguing that it did not ask ''the FAA to 'reconsider' its decision. That matter is now before the Court of Appeals. Instead, the Air Tour Providers asked the FAA to stay the implementation of its rules.'' Reply to Hualapai at 2. In response to the Hualapai's assertion that the FAA lacks the power to grant a stay request, the Air Tour Providers noted that the FAA affirmatively stated that it has the authority to stay the effective date of action pending judicial review pursuant to 5 U.S.C. section 705. Reply to Hualapai at 2–3. Furthermore, the Air Tour Providers noted that the Court's Order denying the Air Tour Providers' Motion for Stay stated that under the Federal Rules of Appellate Procedure, the Air Tour Providers were required to file a request for a stay pending judicial review first with the FAA because they had not demonstrated that to do so was ''impracticale.'' Reply to Hualapai at 3. Finally, the Air Tour Providers maintained that the request for a stay is not time-barred because 14 CFR 11.73 does not apply.

The Trust also submitted an opposition to the Air Tour Providers' Motion, arguing the following: (1) The request is time barred; and (2) even if the FAA considers the Motion, the Air Tour Providers have failed to demonstrate that they satisfy the four-pronged test. First, the Trust maintained that the Stay Motion was filed in violation of 14 CFR 11.73 which permits a request for reconsideration to be filed within 30 days after the rule is published. The Trust noted that the Air Tour Providers filed their request 118 days after publication—88 days after the regulatory deadline. Trust Opposition at 2.

Second, the Trust argued that the Air Tour Providers failed to demonstrate that the FAA adopted the final rules arbitrarily and capriciously or abused its discretion. The Trust maintained that the Air Tour Providers' argument that the final rules violate the Administrative Procedures Act (APA) review almost entirely on evidence not in the administrative record. See Trust Opposition at 4–5. In response to the Air Tour Providers argument that the FAA violated the RFA, the Trust argued that Section 603 of the RFA is not subject to judicial review. The Trust also maintained that the ''RFA does not require agencies to show that economic impacts of their rules were *absolutely* minimized; it requires only a description of steps taken to minimize *significant* economic impact on small entities *consistent with* the stated objectives of the applicable statutes.'' Trust Opposition at 9 (emphasis in original quotation).

The Trust also argued that the Air Tour Providers failed to show that the balancing of interests and injuries weighs in their favor since economic loss does not constitute irreparable harm. Trust Opposition at 9. Moreover, the Trust noted that ''other parties, such as the Grand Canyon Trust, et al. will be *significantly* injured if the FAA grants the requested stay and suspension of the final rules.'' Trust Opposition at 10 (emphasis in original quotation). The Trust stated that ''Members of the Grand Canyon Trust, et al. are frequent backcountry users who take great strides to enjoy unique wilderness settings * * * Air traffic noise destroys the wilderness experience and constitutes a significant injury to an interest protected by federal law.'' Trust Opposition at 10. Furthermore, the Trust argued that Congress has already determined the public interest at stake when it required determination that the ''public interest would be served by timely restoration of natural quiet in the Grand Canyon.'' Trust Opposition at 10.

The Air Tour Providers replied to the Trust's Opposition on September 14, 2000. The Air Tour Providers maintained that the Request for Stay is an administrative proceeding before the FAA and is completely separate and apart from any legal proceeding to which the Trust is a party. Reply to Trust at 1. The Air Tour Providers thus maintained that the Trust does not have the right to file a response. Furthermore, the Air Tour Providers took issue with the Trust's argument that the Air Tour Providers are time barred from filing their Request for Stay. The Air Tour Providers made the same basic argument in response to the Hualapai's Opposition. See Reply to Trust at 1–2.

The Air Tour Providers argued that the FAA can in fact consider evidence not in the administrative record and there is no authority barring the FAA from so doing. Reply to Trust at 2. The Air Tour Providers maintained that the FAA is ''required to consider evidence offered by Air Tour Providers of the irreparable harm they have suffered as a result of the Final Rules.'' Reply to Trust at 2.

The Air Tour Providers also took issue with the Trust's assertion that the Air Tour Providers have failed to show that they are likely to prevail in their claim that the final rules are arbitrary and capricious. Specifically, the Air Tour Providers argued that the Trust's position that the Air Tour Providers have provided only ''thin evidence'' that natural quiet was restored in the Grand Canyon prior to implementation of the Final Rules is without merit. The Air Tour Providers point to the ''sworn testimony of two acoustical experts before the Subcommittee on National Parks and Public Lands of the United States House of Representatives on two separate occasions'' and the declaration by John Alberti. Reply to Trust at 3–4.

The Air Tour Providers also argued that the Trust's statement that the NPS' computer sound model should be given deference because ''it has 'expertise' in the field of acoustical measurements'' is without support. Reply to Trust at 4. The Air Tour Providers asserted that NPS is ''not entitled to any such deference when NPS cannot support its approach even in theory.'' *Id.* The Air Tour Providers then point to a letter from the FAA to NPS in which the FAA allegedly characterized the NPS' methodology as ''unrealistic,'' ''arbitrary and artificial,'' and ''not scientifically valid.'' *Id.*

The Air Tour Providers also denied the validity of the Trust's contention that the Air Tour Providers cannot support their claims about the significant impact of these rules on the elderly and mobility impaired individuals. Reply to Trust at 5.

In response to the Trust's assertion that Air Tour Providers ''cannot even bring the first RFA claim because it is a challenge of the initial regulatory flexibility analysis and therefore, is not subject to review,'' the Air Tour Provides stated that they are challenging the ''final regulatory flexibility analysis

of January 2000'' and that challenges under section 604 of the RFA are subject to judicial review. Reply to Trust at 6. The Air Tour Providers also asserted that the Trust's argument that the FAA satisfied its obligations under the RFA by minimizing the significant economic impact is without merit because the FAA has ''refused to take such steps'' *Id.* Finally, the Air Tour Providers maintained that the Trust's contention that the parties it represents will be significantly injured if the FAA grants the Stay Request is flawed because the standard is not significant injury but ''irreparable injury or harm.'' Rely to Trust at 7. The Air Tour Providers maintained that only they have demonstrated irreparable injury. *Id.*

Agency Response

A. The Air Tour Providers Request Is Not Time Barred

The FAA is not considering this request to be time-barred-While the FAA would not normally consider a stay motion filed 188 days from the issuance of a rule to be timely, in this instance, the Air Tour Providers first sought remedy in the United States Court of Appeals for the District of Columbia Circuit. The government then filed a Motion for Summary Denial of the Air Tour Provider's motion based on the fact that the Air Tour Providers did not file first before the FAA and thus exhaust its administrative remedies as required by the Federal Rule of Appellate Procedure Rule 18. The Court granted the government's Motion for Summary Denial on July 19, 2000. The Air Tour Providers then filed this Stay Motion with the FAA on July 31, 2000. Thus, the FAA does not intend to act in bad faith by refusing to even consider the Air Tour Providers' Motion because of the length of time that has passed between the issuance of the rule and the Air Tour Providers' stay request to the FAA. Notably, the Air Tour Providers filed their Motion with the FAA twelve days after the Court granted the government's Motion for Summary Denial.

B. The Four-Pronged Test Enunciated in Washington Metropolitan Is Not Applicable to an Administrative Proceeding

The Department of Transportation has previously found that the four-pronged test enumerated in *Washington Metropolitan* for deterring whether to grant a stay of rules pending litigation is applicable to the appellate courts only. Albert O. McCauley; Herbert Gene Vance; Duncan Black Parker, FAA Docket CP89SO0149; FAA Docket CP89SO0137; FAA Docket CP89SO0182, 1990 FAA LEXIS 200 (January 12, 1990). ''The primary stay consideration at the trial level usually relate[s] to whether the public interest or the interest of the private parties involved, or both would be served by a delay of the proceeding.'' *Id.* at 7. The public interest, in this case, has been expressed by Congress in Public Law 100–91—to substantially restore natural quiet to the Grand Canyon National Park. Congress gave the NPS broad discretion to define substantial restoration of natural quite. The agencies have determined that the final rules at issue in this stay request would make substantial gains in achieving this goal. Thus, to delay or suspend the effective date of these rules would be contrary to the purpose of the Congressional mandate, unless another public interest or private interest was served by a stay. The private interests alleged by the Air Tour Providers primarily concern the economic impact of the rules. These interests have already been considered by the FAA in the final rules. There is no additional evidence presented by the Air Tour Providers that warrants shifting the balance achieved by these rules. Thus, the FAA has determined that implementing the final rules furthers the public interest by limiting the number of air tours that are permitted in the Park and establishing new routes and air space configurations in the Special Flight Rules Area, thereby promoting the statutory goal of substantial restoration of natural quite.

C. The Air Tour Providers Have Not Satisfied the Four-Part Test Enunciated in Washington Metropolitan

Even if the four-part test enunciated in *Washington Metropolitan* is applicable to the FAA's administrative proceeding, the Air Tour Providers have not demonstrated that the test is satisfied and thus, that a stay of the Commercial Air Tour Limitations final rule and the Air Space Modification final rule is warranted.

1. The Air Tour Providers Have Not Demonstrated That They Are Likely To Prevail on the Merits

In support of their contention that the FAA has violated the APA by issuing the final rules in an arbitrary or capricious manner, the Air Tour Providers submit contrary acoustical data in an attempt to discredit the agency's analysis supporting the need for the final rule. See Motion for Stay, Exhibit A, Statement of John Alberti. Mr. Alberti takes issue with the sound studies completed by the FAA and NPS in the 1990's and states that he ''performed a neutral study of aircraft sound levels in the Grand Canyon.'' Alberti Statement at 2. Mr. Alberti's statement is similar to a statement filed in the public docket that is part of the administrative record to this proceeding, see Administrative Record, Document Number 69, Comment No. 38.

As explained in the final rule, the FAA and NPS determined after the 1996 final rule that the aircraft cap did not adequately limit growth and noise modeling ''indicated that the potential growth in the number of operations could erode gains made toward substantial restoration of natural quiet.'' See 65 FR at 17713. The NPS' conclusion that substantial restoration was not going to be achieved under SFAR 50–2, as amended in December 1996, was explained in detail in the SEA. See SEA at 1–5, 4–17—4–22. The fact that the Air Tour Providers have submitted acoustical studies to contradict the studies conducted by FAA and NPS does not demonstrate that the FAA violated the APA in issuing the final rules. It simply indicates that scientific or statistic analyses can differ. The law is clear, however, that the Court ''will give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise.'' *Natural Resources Defense Council, Inc.* v. *EPA,* 194 F.3d 130 (D.C. Cir., 1999). In this case, the FAA has demonstrated a rational connection between the facts and its choice and thus it has satisfied the rationality standard.

The Air Tour Providers argument that the agencies acted arbitrarily and capriciously by ''abandoning the definition of natural quiet they have used since the Overflights Act was enacted, in 1987, substituting a ''detectability'' standard for the ''noticeability standard'' is also flawed. See Motion at 8. It is not unexpected that over time new information, data and technology might result in a well-considered refinement in methodology. When such a situation occurs, ''* * * an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. * * *'' *Greater Boston Television Corp.* v./ *FCC,* 444 F.2d 841 (D.C. Cir., 1970); *cert. denied,* 403 U.S. 923, 29 L. Ed. 2d 701, 91 S. Ct. 2233 (1971).

Section 3 of Public Law 100–91 authorizes the Secretary of Interior to provide continued advice and recommendations to the FAA regarding the interpretation of policy on noise

impact assessment at GCNP. Section 3 further directs that the FAA adopt the recommendations of NPS ''without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety.'' The two agencies have been seeking to achieve substantial restoration of natural quiet at GCNP pursuant to these congressional mandates. Therefore, in the December 1996, Final EA, as part of the noise methodology for determining substantial restoration of natural quiet and based upon NPS' recommendations, the FAA defined the threshold for evaluating the percent of time each day (12 hour daytime period) that aircraft would be audible in the park as three decibels above ambient. The use of this noticeability standard and methodology was upheld in *Grand Canyon Air Tour Coalition* v. *FAA,* 154 F.3d 455 (D.C. Cir., 1998).

Since 1996, NPS has refined the noise impact assessment methodology to be used in defining substantial restoration of natural quiet at GCNP to more accurately reflect the potential for aircraft noise impacts in the park based on the specific characteristics of the different areas of the Park. NPS explained its rationale for refining the methodology used to define substantial restoration of natural quiet in its Public Notice ''Change in Noise Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park, 64 FR 3969, published January 26, 1999. See Administrative Record, Document 108. The NPS also published a Notice of Disposition of Public Comments and Adoption of Final Noise Evaluation Methodology, 64 FR 38006, on July 14, 1999. See Administrative Record, Document 121. The January 26, 1999, **Federal Register** Notice explained that the standard for substantial restoration of natural quiet remained unchanged and only the evaluation methodology was to be refined. 64 FR at 3969–3970; see also 64 FR 38006, 38008. NPS further explained that it would apply two different threshold levels to different parts of the Park based upon its analysis of regions of the park that were determined to have greater or less noise sensitivity. Those areas of the Park encompassing the developed areas would be evaluated using the three decibels above ambient threshold (*i.e.,* Zone 1), while areas without development, or ''back country'' areas would be evaluated using the eight below ambient threshold (i.e., Zone 2). NPS described at length how it developed the eight decibels below ambient threshold, the aircraft noise monitoring, natural ambient measurements and INM conversion and calculations required in its July 14, 1999 Notice and Disposition of Comments. 64 FR 38006–38012. In the final rule for the Commercial Air Tour Limitation, NPS and FAA further clarified that ''the minus 8 decibels below ambient is not the sound level at which aircraft must operate or the acoustic level that must be achieved. It is a mathematical conversion necesitated by the computer modeling. The minus 8 decibels below ambient describes the 'starting point' at which the measurement of substantial restoration begins.'' 65 FR at 17721. Therefore, the refinement of the thresholds for evaluating substantial restoration of natural quiet at GCNP was not arbitrary and capricious nor contrary to Public Law 100–91.

In their reply to the Trust's Response to the Administrative Motion for Stay, the Air Tour Provider's cite to a letter from FAA to NPS dated June 6, 2000, to support their contention that the FAA has criticized the NPS' noise methodology. This letter contained FAA comments to NPS on its Draft Director's Order #47, ''Soundscape Preservation and Noise Management.'' The FAA has never interpreted Director's Order No. 47 as applying to GCNP. The quotes relied upon by the Air Tour Providers to support their assertion that the FAA criticized the NPS noise methodology actually addressed certain assumptions, quantitative assessments and approaches to evaluating the baseline noise environment, aircraft noise impacts and noise levels proposed by NPS to be utilized in National Park units that do not have legislative directives. Therefore, the refined evaluation methodology for substantial restoration of natural quiet at GCNP is not the subject of the June 6th letter, and the Air Tour Providers references to this letter are both out of context and inapplicable to the subject of the Motion for Stay.

The Air Tour Providers also have failed to demonstrate that the FAA acted arbitrarily and capriciously by focusing on aircraft sound generated by commercial air tour operators. Public Law 100–91 set forth a broad mandate that the FAA issue regulations, pursuant to recommendations by NPS, to regulate aircraft overflights so as to substantially restore natural quiet at the Park. Congress gave the NPS maximum discretion to determine the best means to effect the goal. NPS recommended an operations limitation on air tour aircraft in its Report to Congress. See Recommendation 10.3.10.3, Report on Effects of Aircraft Overflights on the National Park System, September 12, 1994. Furthermore, the record supports the decision to focus on commercial air tour aircraft. As the FAA stated in the Commercial Air Tour Limitations Final Rule, ''noise generated by aircraft conducting commercial air tours presents a specific type of problem because these aircraft generally are operated repeatedly at low altitudes over the same routes.'' 65 FR at 17710. Additionally, FAA data indicates that the volume of commercial air tour traffic is much higher then general aviation traffic. See Regulatory Evaluation Final Rule, Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area, at 21 (January 21, 2000). Thus, the FAA's focus on commercial air tour aircraft is supported by the findings in the Record and the broad mandate set forth in Public Law 100–91.

The FAA also did not act arbitrarily and capriciously by determining to impose a limitation on commercial air tours instead of adopting the quiet technology standards proposed in December 1996. In the final rule on Commercial Air Tour Limitations, the FAA reiterated its commitment to developing a quiet technology standard. 65 FR at 17714. However, due to the numerous issues raised by commenters in the NPRM on Noise Limitation of Aircraft Operations in the Vicinity of Grand Canyon National Park (Docket 29770), issuance of the final rule in the Noise Limitations rulemaking has taken longer than anticipated. It is noteworthy that in that rulemaking as well, many commenters maintained that imposition of quiet technology would pose an unreasonable financial burden on the air tour industry. See 65 FR 17714. Because the agencies found that growth in the industry had only temporarily arrested due to economic factors, they determined that an operations limitation was necessary to ''make significant strides towards meeting the statutory goal'' by the 2008 deadline set by the President of the United States. 65 FR 17714; see 65 FR 17709 (explaining the goals set forth in the President's memorandum of April 22, 1996).

Additionally, the final rules at issue in this stay request were issued prior to the enactment of the National Park Air Tour Management Act. Thus, contrary to the Air Tour Providers' assertions, the issuance of the Commercial Air Tour Limitations final rule and the Air Space Modification final rule does not violate any law. The FAA also notes the fact that operators made equipment decisions to purchase different aircraft is not persuasive since the equipment decision was voluntary and speculative at best. The FAA never finalized the

Noise Limitations Final Rule, thus the FAA has not mandated a definition of quiet technology air tour aircraft.

Contrary to the Air Tour Providers' accusations, the FAA considered comments by the air tour operators on the route system in devising the routes. The Air Tour Providers' Motion contains statements by Ms. Brenda Halverson, Papillon Airways, Inc., and Mr. Ron Williams, AirStar Helicopters, opposing the new route structure that goes up over the north rim because there is no turnaround in the Zuni Corridor for helicopters. NPS, in its Report to Congress, indicated that eliminating two way traffic in the flight corridors was critical to achieving substantial restoration of natural quiet. Thus, where possible, FAA has attempted to minimize two-way traffic in the Dragon and Zuni Point Corridors. The Dragon Corridor has a turnaround for helicopters only. The Zuni Point Corridor has a turnaround for fixed wing aircraft. Both helicopters and fixed wing aircraft operating in the Zuni Point Corridor have the option of going up over the North Rim, or if necessary using Black 2 and Green 3 routes that go east around the Desert View Flight Free Zone. The movement of the Black 2 and Green 3 was necessary in order to protect Traditional Cultural Properties identified during the consultation process with the Native American Tribes. See 65 FR 17739; SEA at 4–40–41, Appendix H.

Additionally, the FAA finds that the Air Tour Providers' allegations that the new routes are unsafe are without merit. The new routes were developed based on ''airspace configurations, safety considerations, the goal of substantial restoration of natural quiet in the GCNP, economic considerations, consultation with Native American tribes'' and comments received in response to the initial Notice and prior route proposals. 64 FR 37191 (July 9, 1999). As is typical when routes are change, the FAA flight checked the routes for safety. Additionally, the FAA created a computer model to assess the impact of peak conditions on the new route system. See 65 FR 17719–20. The FAA's primary concern is that air tour operators do not concentrate the use of their allocations into one season which could pose a safety concern and impede the goal of achieving substantial restoration of natural quiet. *Id.*

The Air Tour Providers assertion that these rules are arbitrary and capricious because they violate the Rehabilitation Act is unsubstantiated. First, the Air Tour Providers make no specific allegation as to the provisions of the Rehabilitation Act that are violated and the citation referenced in the quotation contained in the Motion is not applicable. Second, The Air Tour Providers' evidence as to the percentage of air tourists who are mobility impaired, elderly or handicapped varies dramatically depending upon which operator is providing the information. (See Statement of Brenda Halverson supporting Motion for Stay indicating that over 75% of the Air Tour Provider's clients are handicapped, mobility impaired or elderly; Statement of Ron Norman supporting Motion for Stay indicating no less than 40% of AirStar Helicopters clients account for handicapped, mobility impaired or elderly; Comments of Grand Canyon Air Tour Council, September 3, 1999, indicate that about 20% of air tourists are ''physically challenged.'') The FAA noted in the Commercial Air Tour Limitations Final Rule that ''over 50% of the air tour visitors to GCNP also visit the Park on the ground. Also, people who are handicapped, impaired or elderly will continue to enjoy access to the GCNP.'' 65 FR 17716. Thus people who are handicapped, mobility impaired, or elderly will have the same ability to access the Grand Canyon by air as other individuals.

The Air Tour Providers also attack FAA's choice of base year for the flight limitation because the FAA did not use current data. The FAA's choice of base year was reasonable and is thoroughly discussed in the Commercial Air Tour Limitations Final Rule wherein the FAA stated:

> Data on operations levels for the year May 1, 1997 through April 30, 1998 comprised the most accurate and current data available during the period that this rule was being drafted. Data subsequently collected from the industry for the year May 1, 1998 through April 30, 1999 show a slight decline in the number of total operations from the previous year. Thus the FAA and NPS believe that the period from May 1, 1997 through April 30, 1998 is a representative year for the purpose of imposing this allocation. See 65 FR at 17718.

At the time this rule was being drafted, the data for the period May 1, 1999–April 30, 2000 was not available.

The Air Tour Providers' assertion that the use of the base year data violates the RFA and that the FAA ignored the Small Business Administration's (SBA) comments is unsubstantiated. The SBA did not provide any comments to the docket on the final rules until December 20, 1999 where SBA presented its concerns at a meeting between the Office of Management and Budget, the FAA and representatives of the Air Tour Providers. (In fact, representatives of the Office of Economics and Policy attempted to meet with SBA several times during the time period the final rule was being drafted, but SBA was unable to attend scheduled meetings.) The comment period to the NPRM closed September 7, 1999. At the OMB meeting the SBA noted that ''the use of future years, or an average of the next 2 years, might be an alternative that more accurately reflects the marketplace within the Grand Canyon tour industry and will aid in the forecasting industry growth rates.'' See Administrative Record, Document 70, Comment 277. The FAA believes its analyses of the subsequent base year dispels any concern that this year was an aberration; instead it appears that the base year is part of the business cycle. See Exhibit A, Statement of Alan Stevens to Motion to Stay.

The Air Tour Providers' claim that the agencies' were arbitrary and capricious in relying upon an invalid computer sound model and biased sound data is equally unfounded. The Air Tour Providers rely on statements made by John Alberti asserting that the computer model used by the agencies is without scientific basis. To the contrary, the ''FAA chose to use the Integrated Noise Model (INM) for GCNP analysis because of its: (1) Widespread scientific acceptance; (2) use of methodology that conforms to industry and international standards; (3) measurement-derived noise and performance data; (4) ability to calculate noise exposure over varying terrain elevation; and (5) adaptability and reliability for assessing a variety of situations, including GCNP noise impacts.'' See SEA at 4–5—4–6. The INM is well accepted in the scientific community and meets the standards of the Society of Automotive Engineers Aerospace Information Report (Air) as well as the International Civil Aviation Organization (ICAO) Circular. See SEA at 4–6. The INM was specifically modified for GCNP purposes. These modifications, along with the aircraft and operational data inputted for modeling, assessing and predicting aircraft noise at GCNP were analyzed and explained in detail in the SEA.

The Air Tour Providers did not provide an adequate basis for their statement that the FAA relied on biased sound data. The NPS provided information on data collection in its Disposition or Comments. 64 FR 38006. Additionally, the FAA provided aircraft and operational data utilized in its noise modeling in the SEA. Again, the law is clear, the Court ''will give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise.'' *Natural*

Resources Defense Council, Inc. v. *EPA,* 194 F.3d 130 (D.C. Cir., 1999).

Finally, as stated earlier, the final rules were issued and the accompanying SEA and Record of Decision were completed prior to the enactment of the National Parks Air Tour Management Act cited by the Air Tour Providers. Therefore, the agencies are not in violation of the law. Regardless, the INM is a reasonable and professionally accepted method for assessing and predicting aircraft noise impacts and therefore the agencies' reliance on the model and aircraft and operational data is not arbitrary and capricious.

The Air Tour Provider's assertion that the exception created for operators landing at the Hualapai reservation under contract with the Hualapai Tribe is arbitrary and capricious is contrary to law. When Congress passed the Indian Reorganization Act of 1934 an overriding purpose of that Act was ''to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government both politically and economically.'' *Morton* v. *Mancari et al.,* 417 U.S. 535, 541; 94 S.Ct. 2474 (1974). Congress in 1934 ''determined that proper fulfillment of its trust required turning over to the Indians a greater control of their own destinies.'' Id. at 552. The FAA determined that ''the Hualapai would be significantly adversely impacted from an economic perspective if the operations limitation were applied to operators servicing Grand Canyon West Airport in support of the Hualapai Tribe.'' 65 FR at 17718; see pages 17714–17715 and 17726–17727 (regarding trust responsibility and cost impact on tribe); see also Final Regulatory Evaluation at 98–110. Any operator has the opportunity to obtain the benefits of this exception (i.e., relief from allocations) provided the operator has a contract with the Hualapai Tribe and satisfies the conditions of the exception. The Hualapai decide which operators to contract with.

The exception from allocations applies to the air tour operators servicing the Hualapai Reservation. Contrary to assertions by the Air Tour Providers, this exception does not violate the Air Tour Provider's constitutional rights and in fact, the Air Tour Providers do not actually identify any constitutional rights that have been violated. Furthermore, the Air Tour Providers ignore the fact that if the Hualapai Tribe is enjoying ''unparalleled economic growth,'' the Air Tour Providers also are benefiting since they are providing the flight service to the Hualapai reservation.

2. The Air Tour Providers Have Not Substantiated Irreparable Economic Losses Nor Have They Demonstrated the Quantum of Harm Is Great

In showing irreparable harm, ''the movant must provide the proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.'' *Wisconsin Gas Co.* v. *FERC,* 758 F.2d 669, 673 (D.C. Cir. 1985). The *Wisconsin* Court further stated that ''economic loss does not, in and of itself, constitute irreparable harm.'' *Id.* Thus, if the Air Tour Providers are in fact losing customers, it does not constitute irreparable harm since the loss of customers is due to the reduction in flights in the SFRA, which is the purpose of the flight limitation. As discussed above, the reduction in flights is necessary in order to achieve the statutory goal of substantial restoration of natural quiet and to meet the President's goal for achieving substantial restoration by 2008.

The Air Tour Providers also do not provide any direct evidence that the harm they are suffering is immediate and imminent and will occur over the next 6–9 months while this litigation is ongoing. The FAA's Commercial air tour limitations final rule became effective May 4, 2000. The operators received a full years worth of allocations for the year 2000. The operators do not provide evidence that they are close to exhausting or have exhausted these allocations and thus must stop conducting business. In fact, Mr. Alan Stevens of Grand Canyon Airlines only acknowledges the theoretical possibility that he could exhaust his allocations. See Statement of Alan Stevens at page 4. Whether the operators will then incur damages for the year 2001 is also theoretical and depends on demand for air tours during the portion of 2001 that coincides with the litigation. Thus, at this point, there is no clear evidence submitted by the Air Tour Providers that the operators currently are losing money for the year 2000 because of the allocation requirement or that they will lose money for the first half of 2001 because of this requirement. Additionally, while some of the operators' statements assert they may go out of business with the imposition of the limitations rule and the routes, they do not provide direct evidence to demonstrate that their demise is due to these rules and not to the cumulative effect of past business conditions in the market.

The Air Tour Providers also argue irreparable injury because the FAA has not minimized the impact of the longer tour routes or the ''use it or lose it provision.'' The FAA has attempted to minimize the impact of the longer routes to the extent possible by creating a fixed wing turnaround in the Zuni Point Corridor. The Dragon corridor contains a turnaround for helicopters. See 65 FR at 17698. With regard to the use it or lose it provision, the FAA eliminated the peak/non-peak distinction that was initially contained in the NPRM. Thus, Ron Norman's assertions that the ''FAA will rescind any flight allocations that go unused during either the Peak or non-peak season'' is unfounded. See Exhibit A Statement of Ron Norman at paragraph 7.

Furthermore, the FAA adopted suggestions by commenters to soften the use it or lose it provision by lengthening the time period. In fact, the FAA adopted a provision similar to Papillon's suggestion in its comments whereby after 180 days of inactivity, the operator simply sends in a letter of intent to operate that indicates why the operator did not operate for 180 days and when it intends to resume business. The operator then may have up to another 180 days to resume operations, as approved by the Flight Standards District Office. An operator would have up to 360 days of inactivity, as suggested by Air Star Helicopters in its comments. See 65 FR 17721–17722.

The FAA's Regulatory Flexibility Act analysis comports with the requirements of the RFA. See generally, Final Regulatory Evaluation, Commercial Air Tour Limitations Final Rule and Airspace Modification Final Rule, January, 2000. Providing statistical analysis to counter an agency's own analysis is not sufficient to show that an agency acted arbitrarily and capaciously since a court will ''give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise.'' See *NRDC* v. *EPA* 194 F.3d 130 (D.C. Cir., 1999). Furthermore, the fact that the FAA did not proceed first with the Quiet Technology Rulemaking or some other alternative now preferred by the Air Tour Providers is not indicative that the agency violated the APA. The law is clear that an ''agency is entitled to the highest deference in deciding priorities among issues, including the sequence and grouping in which it tackles them.'' *Allied Local and Regional Manufacturers Caucus, et al.,* v. *EPA,* 215 F.3d 61 (2000). The agency provided a detailed economic analysis and RFA analysis that addressed alternatives to the adopted alternative and discussed reasons why those

alternatives were not adopted. Thus it has satisfied its mandate under the RFA.

3. The Air Tour Providers Have Not Demonstrated That the Weighing of the Interests Favors a Stay

The FAA, in enacting these rules is carrying out the statutory mandate set forth in Public Law 100–91—to substantially restore natural quiet in the GCNP. It has been 12 years since the enactment of this legislation and the FAA has attempted to work with the Air Tour Providers, the Indian Tribes, the environmental groups and the National Park Service to come to a resolution with regard to the means of substantially restoring natural quiet. The FAA believes that this rule achieves the proper balance that Congress sought in adopting Public Law 100–91 between the interests of the Air Tour Providers and those of the environmental interests and makes significant gains in substantial restoration of natural quiet. See 65 FR 17713. This balance is evidenced by the fact that the government has been sued in the District of Columbia Circuit Court of Appeals for the United States by one party (Air Tour Providers) claiming the government has done too much in effecting the goal of Public Law 100–91 and by another party (Grand Canyon Trust, *et al.*) claiming the government has not gone far enough in fulfilling the statutory mandate. The Air Tour Providers have not demonstrated why their interests outweigh the interest expressed by Congress in passing Public Law 100–91.

D. Conclusion

Given that the Air Tour Providers cannot prevail under either the public interest test followed by the Department of Transportation, or the *Washington Metropolitan* test followed by the Circuit Court, the FAA hereby denies the Air Tour Providers' Motion to Stay the final rules.

Issued in Washington, DC on October 3, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–25952 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 25

[Docket No. 00N–0085]

National Environmental Policy Act; Food Contact Substance Notification System; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 24, 2000, for the direct final rule (DFR) that appeared in the **Federal Register** of May 11, 2000 (65 FR 30352). The DFR amended FDA's regulations on environmental impact considerations. This document confirms the effective date of the DFR.

DATES: Effective date confirmed: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a DFR published in the **Federal Register** of May 11, 2000 (65 FR 30352), FDA amended its regulations on environmental impact considerations as part of the agency's implementation of the FDA Modernization Act (FDAMA) of 1997. FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) by establishing a notification process for authorizing new uses of food additives that are food contact substances. The DFR amended the regulations in 21 CFR 25.20 to add to the list of those actions that require an environmental assessment allowing a notification submitted under section 409(h) of the act (21 U.S.C. 348(h)) to become effective and in 21 CFR 25.32(i), (j), (k), (q), and (r) to expand the existing categorical exclusions from the requirement of an environmental assessment to include allowing a notification submitted under section 409(h) of the act to become effective.

FDA solicited comments concerning the DFR for a 75-day period ending July 25, 2000. FDA stated that the effective date of the DFR would be on August 24, 2000, 30 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period.

FDA received only one comment (from a trade association) on the DFR, which reiterated the association's views presented in response to an agency public meeting held prior to the initiation of this rulemaking. FDA has determined that the received comment is not a significant adverse comment for several reasons. First, in the preamble to the DFR, FDA referenced the association's prior submission and addressed its substance. Second, the comment does not dispute (or even directly address) the analysis presented in the DFR. It raises no new arguments and provides no new information for the agency's consideration. Finally, the association expressly characterizes the comment as not a ''significant adverse comment'' and supports the rule becoming effective as drafted.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby became effective August 24, 2000.

Dated: October 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–26022 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–00–009]

Drawbridge Operation Regulations; Mokelumne River, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District has approved a temporary deviation to the regulations governing the opening of the Millers Ferry swing bridge, mile 12.1, over the Mokelumne River at Walnut Grove, CA. The approval specifies that the bridge need not open for vessel traffic from 8 p.m. to 6 a.m., October 9 through October 13, 2000. The purpose of this deviation is to allow Sacramento County to perform essential maintenance on the bridge.

DATES: Effective period of the deviation is 8 p.m., October 9, 2000 through 6 a.m., October 14, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, phone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Millers Ferry Highway Swing Bridge, mile 12.1, over the Mokelumne River at Walnut Grove, CA provides 12.8 feet vertical clearance above Mean High Water when closed. Vessels that can pass under the bridge without an opening may do so at all times. This deviation has been coordinated with commercial operators and various marinas on the waterway. No objections were received.

The normal drawbridge regulation requires the bridge to open on demand, 9 a.m. to 5 p.m., May 1 through October 31; and all other times if at least 12 hours advance notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 29, 2000.

C.D. Wurster,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 00–26077 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–021]

RIN 2115–AE47

Drawbridge Operating Regulation; Gulf Intracoastal Waterway, Algiers Alternate Route, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana. The change allows the bridge to remain closed to navigation from 4 p.m. until 7 p.m. on Saturday and Sunday of the last weekend in October. This change facilitates the movement of vehicular traffic from the New Orleans Open House Air Show held annually at the Naval Air Station, Joint Reserve Base at Belle Chasse, Louisiana.

DATES: This rule is effective October 11, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 28, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operating Regulation; Gulf Intracoastal Waterway, Algiers Alternate Route, Louisiana, in the **Federal Register** (65 FR 52057). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The change in the regulation involves a community event of limited duration and scope. The closure involves only one bridge and alternate routes are available. No comments were received during the comment period included in the Notice of Proposed Rulemaking. No objections from waterway users have been received and the event will be published in the Local Notice to Mariners.

Background and Purpose

The State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, and occasional recreational craft.

The Department of the Navy requested a rule changing the operation of the State Route 23 vertical lift span drawbridge. The change accommodates the additional volume of vehicular traffic that the New Orleans Open House Air Show generates each year. Between 150,000 and 200,000 members of the public are expected to attend the New Orleans Open House Air Show on each day. The change allows for the expeditious dispersal of the heavy volume of vehicular traffic expected to depart the Naval Air Station, Joint Reserve Base following the event. This event has been held annually on the last weekend in October. This change eliminates the necessity of having to do a rulemaking each year for this annually scheduled event.

Discussion of Comments and Changes

No comments were received for the NPRM and no changes have been incorporated into the Final Rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This is because the number of vessels impaired during the closed-to-navigation periods is minimal. All commercial vessels still have ample opportunity to transit this waterway before and after each three-hour closure on the last weekend in October. Additionally, a practical alternate route of approximately seven additional miles is available via the Harvey Canal and the Mississippi River.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under the 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, we want to assist small entities in understanding the rule so that they can

better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule would not have implications for federalism under that Order. No comments were received with regards to federalism during NPRM comment period.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate. No comments were received with regards to unfunded mandates during NPRM comment period.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received with regards to the taking of private property during NPRM comment period.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received with regards to the taking of private property during NPRM comment period.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating regulations or procedures for drawbridges. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 105 Stat. 5039.

2. Section 117.451(b) is revised to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(b) The draw of the SR 23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, operates as follows:

(1) The draw shall open on signal; except that, from 6 a.m. until 8:30 a.m. and from 3:30 p.m. until 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

(2) On Saturday and Sunday of the last weekend in October, the draw need not open for the passage of vessels from 4 p.m. until 7 p.m.

* * * * *

Dated: September 29, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 00–26075 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–00–011]

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District has approved a temporary deviation to the regulations governing the opening of the Isleton bascule drawbridge at mile 18.7 over the Sacramento River, Solano County, CA. The approval specifies that the bridge need not open for vessel traffic from 9 a.m. to 3 p.m. on 23 October 2000. This deviation is to allow California Department of Transportation to perform essential maintenance on the bridge.

DATES: Effective period of the deviation is from 9 a.m. to 3 p.m. on 23 October 2000.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section; Eleventh Coast Guard District, Bldg 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Isleton Drawbridge, mile 18.7, over the Sacramento River, Solano County, CA, provides 18 feet vertical clearance above Mean Lower Low Water when closed. Vessels that can pass under the bridge without an opening may do so at all times. This deviation has been coordinated with commercial operators and various marinas on the waterway. No objections were received. The normal drawbridge regulation requires the bridge to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 29, 2000.

C.D. Wurster,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 00–26076 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

Express Mail International Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On August 7, 2000, the Postal Service announced an interim rule in the **Federal Register** (65 FR 48171) providing a 5 percent discount off the regular postage for all Express Mail International Service (EMS) shipments paid by an Express Mail Corporate Account (EMCA). The Postal Service hereby gives notice that it is implementing the interim rule on a permanent basis.

EFFECTIVE DATE: October 11, 2000.

ADDRESSES: Written comments should be sent to the Manager, International Products, International Business, U.S. Postal Service, 1735 N Lynn Street, Arlington VA 22209–6026. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, Second Floor, at that address.

FOR FURTHER INFORMATION CONTACT: Angus MacInnes, (703) 292–3601.

SUPPLEMENTARY INFORMATION: The Postal Service proposed changes in conditions for certain mailing categories to automatically reduce every payment transaction by 5 percent for all EMS purchased at basic published prices and paid through an EMCA.

An EMCA is an advanced deposit account developed for Express Mail that enables customers to deposit funds with the Postal Service for payment of anticipated future Express Mail mailings. Express Mail Corporate Accounts can be used for domestic and international Express Mail. The discount is available only for Express Mail sent internationally. Federal agencies are eligible for the discount. The discount is deducted from the total postage amount on the mailer's monthly account, rather than for each piece.

The 5 percent discount is offered on postage only; it does not apply to pickup fees, any special fees, nor postage for shipments being made under an International Customized Mail agreement.

As required under the Postal Reorganization Act, this change results in conditions of mailing that do not apportion the costs of service, so the overall value of the service to its users is fair and reasonable, and not unduly or unreasonably discriminatory or preferential.

The Postal Service received no comments in response to its proposal published in the **Federal Register** on August 7, 2000 (65 FR 48171). Accordingly, the Postal Service hereby implements the 5 percent discount and amends the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, international postal services.

PART 20—[AMENDED]

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

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

2. Revise the International Mail Manual as set forth below:

2 Conditions for Mailing

210 Express Mail International Service

* * * * *

212 Postage

212.1 Rates

212.11 Country Rates

See the Individual Country Listings for countries that offer Express Mail International Service.

212.12 Express Mail Corporate Account Discount Rates

Express Mail International Service (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail Corporate Account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to pickup service charges (212.24), additional merchandise insurance coverage fees (211.51), or shipments made under an International Customized Mail agreement.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–25981 Filed 10–10–00; 8:45 am]

BILLING CODE 7710–12–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–029–EXTa; FRL–6872–8]

Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the San Diego serious ozone nonattainment area from November 15, 1999, to November 15, 2000. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 1999. Accordingly, we are updating the table concerning attainment dates for the State of California. In this action, we are approving the State's request through a ''direct final'' rulemaking. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this attainment date extension request.

DATES: This direct final rule is effective December 11, 2000 unless before November 13, 2000 adverse comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**, and inform the public that the rule will not take effect.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the San Diego Area

On May 15, 2000, the State of California requested a one-year attainment date extension for the San Diego serious ozone nonattainment area. This area, which consists of San Diego County, is currently designated a serious ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act as amended in 1990 (''the Act''), was November 15, 1999.

CAA Requirements Concerning Designation and Classification

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, we completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991), and 57 FR 56762 (Nov. 30, 1992). San Diego County was originally classified as severe, but was reclassified as serious based upon our determination that the ozone value used in the original classification was incorrect. See 60 FR 3771 (Jan. 19, 1995).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. As noted, the San Diego ozone nonattainment area was reclassified as serious. By this classification, its attainment date became November 15, 1999. A discussion of the attainment dates is found in EPA's General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990. See 57 FR 13498 (April 16, 1992).

CAA Requirements Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of serious ozone nonattainment areas, the three-year period is 1997–1999.

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) shows that three air quality monitors located in the San Diego ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999.[1] (See Table 1.) There were 9 exceedances at the Alpine monitor, an average of more than 1.0 over the three-year period, which constitutes a violation of the ozone NAAQS for the San Diego area during this three-year period. Thus, the area did not meet the November 15, 1999 attainment date.

TABLE 1.—EXCEEDANCES OF THE 1-HOUR OZONE NAAQS IN SAN DIEGO 1997–1999

[Source: AIRS]

Monitoring Station	Exceedances			
	1997	1998	1999	Total
Chula Vista	0	0	0	0
El Cajon	0	1	0	1
Oceanside	0	0	0	0
San Diego (Overland)	0	1	0	1
Del Mar	0	0	0	0
Escondido	0	0	0	0
Alpine	1	8	0	9
San Diego (12th St.)	0	0	0	0
Camp Pendleton	0	0	0	0
Otay Mesa	0	0	0	0

CAA Provisions Authorizing a One-Year Extension of the Attainment Date

CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards. However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, we may grant up to 2 one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

We interpret this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has no more than one measured exceedance of the NAAQS during the year at any one monitor that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

We have determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) California has formally submitted the attainment date extension request, in a letter dated May 15, 2000, from Michael P. Kenny, Executive Officer, California Air Resources Board, to P. Kenny, Executive Officer, California Air Resources Board, to Felicia Marcus, EPA Regional Administrator, Region 9.

(2) California is currently implementing the EPA-approved SIP. The State's letter, cited above, discusses implementation of State measures in the SIP, and shows that these measures plus new State measures have achieved an overall surplus of emission reductions beyond those assumed in the SIP. The State also attached a letter dated March

[1] AIRS Data Monitor Values Reports are available electronically at http://www.epa.gov/airsdata/monvals.htm

13, 2000, from R. J. Sommerville, Director, San Diego County Air Pollution Control District, which provides evidence that all District SIP rules have been fully implemented.

(3) California has certified that the area has monitored no exceedances during 1999. This is also reflected in the quality-assured ambient ozone data shown in Table 1 above.

Because the statutory provisions have been satisfied, we approve California's attainment date extension request for the San Diego ozone nonattainment area. As a result, the chart in 40 CFR 81.305 entitled ''California—Ozone'' is being modified to extend the attainment date for the San Diego ozone nonattainment area from November 15, 1999, to November 15, 2000.

We are approving the attainment date extension without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, elsewhere in the proposed rule section of today's **Federal Register** we are publishing a proposal to approve this part 81 action should adverse or critical comments be filed. This action will be effective December 11, 2000 unless before November 13, 2000 adverse or critical comments are received.

If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 11, 2000.

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

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled 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, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled 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 (64 FR 43255, August 10, 1999), because it merely approves a state request for an attainment date extension, 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 Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities.

Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA has determined that the promulgated attainment date extension does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action 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 rule 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 December 11, 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 in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 8, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

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

2. In § 81.305 the ''California—ozone'' table is amended by revising the entry for San Diego area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE

[1-Hour Standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
San Diego Area:				
San Diego County	11/15/90	Nonattainment	2/21/95	Serious [2]
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date is extended to November 15, 2000.

* * * * *

[FR Doc. 00–25926 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 424

[HCFA–6004–FC]

RIN 0938–AH19

Medicare Program; Additional Supplier Standards.

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule establishes additional standards for an entity to qualify as a Medicare supplier for purposes of submitting claims and receiving payment for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). These regulations will ensure that suppliers of DMEPOS are qualified to provide the appropriate health care services and will help safeguard the Medicare program and its beneficiaries from any instances of fraudulent or abusive billing practices.

DATES: *Effective Date:* These regulations are effective on December 11, 2000.

Comment Date: We will accept comments on the policies discussed in section IV of the **SUPPLEMENTARY INFORMATION** section of this document. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 11, 2000.

ADDRESSES: Mail an original and 3 copies of written comments to the following address only:

Health Care Financing Administration, Department of Health and Human Services, Attention: 6004–FC, P.O. Box 8013, Baltimore, MD 21244–8013

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–6004–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Charles Waldhauser, (410) 786–6140.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html

I. Background

A. General

Medicare services are furnished by two types of entities, providers and suppliers. The term ''provider'', as defined in our regulations at 42 CFR 400.202, means a hospital, a critical access hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice, that has in effect an agreement to participate in Medicare. A clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center with a similar agreement to furnish partial hospitalization services, is also considered a provider (see sections 1861(u) and 1866(e) of the Social Security Act (the Act) concerning definitions and provider agreements, respectively).

Generally, a Medicare ''supplier'' is an individual or entity that furnishes certain types of medical and other health items and services under Medicare Part B. There are different types of suppliers and thus, different definitions of the term ''supplier,'' as well as specific regulations governing the different types of suppliers. A supplier that furnishes durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) is one category of supplier known as a DMEPOS supplier.

In current regulations at § 424.57(a) concerning payment rules for items furnished by DMEPOS suppliers, we define the term ''supplier'' as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries, and that meets certain standards. The Part B covered items to which the definition refers are DMEPOS.

B. Legislative History

Section 131 of the Social Security Act Amendments of 1994 (Public Law 103–432, enacted on October 31, 1994) made changes to section 1834 of the Act, ''Special Payment Rules for Particular Items and Services.'' Specifically, it added a new subsection (j) to section 1834 of the Act that established additional requirements that a DMEPOS supplier must meet in order to obtain a supplier number. (A ''supplier number'' is the equivalent of a ''billing number'' that a supplier must have in order to submit claims and receive payment for items and services furnished under Medicare.) In section 1834(j)(1)(B)(ii)(IV) of the Act, the Congress also expressly delegated authority to the Secretary to specify any other requirements that a supplier must meet.

II. Provisions of the Proposed Regulations

On January 20, 1998, we published in the **Federal Register** (63 FR 2926) a proposed rule that would require DMEPOS suppliers to meet additional standards in order to submit claims and receive payment. We issued the proposal on the basis of section 1834(j)(1)(B)(ii)(IV) of the Act that authorizes the Secretary to specify additional requirements a DMEPOS supplier must meet. We note that we consulted with representatives of medical equipment and supply companies, carriers, and consumers before issuing the proposal.

As we stated in the proposed rule, we believe it was the Congress' intent in enacting section 131 of the Social Security Act Amendments of 1994 to

strengthen existing standards in order to protect the public interest. We also stated our belief that the additional standards we proposed would help safeguard the Medicare program and would serve to protect beneficiaries.

The major provisions of the proposed rule are as follows:

A. Specific Requirements for Supplier Standards

We proposed changes to clarify our current policy concerning certification and recertification for DMEPOS. Specifically, we proposed that in order to obtain a supplier number, a supplier must complete an application certifying that it meets the supplier standards found in § 424.57(c). Additionally, we proposed that when renewing an application for a DMEPOS supplier billing number, a supplier must recertify that it meets all of the supplier standards.

We proposed new standards and revisions to existing standards relating to the following subject areas:

- Compliance with Medicare statutory provisions and applicable regulations.
- Compliance with applicable Federal and State licensure and regulatory requirements.
- Misrepresentation of facts.
- Signature used on a supplier number application.
- Providing requested information and documentation.
- Scope of exclusions.
- Rental or purchase option.
- Warranties.
- Delivery.
- Reassignment of supplier numbers.
- Physical facility.
- Business telephone.
- Liability insurance.
- Telemarketing.
- Prescription drugs.

B. Additional Revisions

We also proposed to require that DMEPOS suppliers obtain a surety bond. We based this requirement on section 1834(a)(16) of the Act which requires DME suppliers to provide the Secretary, on a continuing basis, with a surety bond. We requested comments on the advisability of exercising this authority to impose a surety bond on all suppliers of prosthetics, orthotics, and supplies to the same extent as required for suppliers of durable medical equipment.

III. Analysis of and Responses to Public Comments

We received 120 comments on the proposed rule primarily from suppliers of DMEPOS and organizations representing various types of DMEPOS suppliers. A summary of the comments and our responses to them follow.

A. Payment Rules (Proposed § 424.57(b))

Comment: One commenter requested that an exception be granted to the effective date provision in a change of ownership situation. The commenter was referring to the statement in the proposed rule that Medicare will not pay for any Medicare covered items provided by a DMEPOS supplier prior to the date HCFA issues a DMEPOS supplier number. The commenter suggested that in the case of a change of ownership, Medicare should pay for covered services as of the date of acquisition.

Response: We are aware of the change of ownership issue. However, at this time we are not prepared to include a change of ownership provision in this final regulation. We plan to address change of ownership issues in a separate rulemaking.

Comment: One commenter stated that a supplier should not receive multiple billing numbers for the same physical location, regardless of how many tax ID numbers they possess.

Response: This suggestion is problematic, in that the Internal Revenue Service (IRS) Employer Identification Number (EIN) is the basic identification number that we use to distinguish between suppliers. Suppliers also may obtain multiple EINs for different lines of business.

We note that section 1834(j)(1)(D) of the Act states that ''The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.'' Therefore, we encourage suppliers to request only one supplier number per physical location. However, we are not prepared at this time to forbid multiple billing numbers based on multiple EINs if we can establish through a site visit or other means that clearly distinct lines of business are being conducted at a location. In this final rule, we are adding a new paragraph (b)(1) to § 424.57 to require suppliers to enroll separate physical locations, other than warehouses or repair facilities.

B. Supplier Standards (Proposed § 424.57(c))

1. General

Comment: One commenter suggested that we require immediate recertification of all suppliers based on the new standards.

Response: This would create a heavy administrative burden on both HCFA and the suppliers. As we stated in the proposed rule, we will not require all DMEPOS suppliers to submit new applications for billing numbers on the date this regulation becomes effective, but will require DMEPOS suppliers to submit new applications as the old numbers expire. Although we may not routinely check to determine the compliance of current suppliers with new standards, it is important to note that as of the effective date of this regulation, December 11, 2000, all DMEPOS suppliers must comply with these standards. We may perform random or focused reviews of previously enrolled suppliers to determine their compliance with the new standards. We may revoke a supplier number if we find evidence that the standards are not satisfied.

Comment: One commenter stated that physicians should be exempt from supplier standards because they have to meet similar standards in order to be licensed.

Response: While physicians are required to meet State licensing requirements, these may vary by State, and do not necessarily apply to physicians while they are functioning as suppliers. More importantly, standards are different for physicians than suppliers. Therefore, we decline to exempt physicians from the requirements.

2. Compliance With Medicare Statutory Provisions and Applicable Regulations (Proposed § 424.57(c)(1))

Comment: One commenter suggested that HCFA provide a list of the requirements that a supplier would need in order to comply with this standard.

Response: We have not accepted this suggestion. The intent of this standard is to ensure that the supplier meets all Medicare requirements that may apply. The standard is essentially a restatement of section 1834(j)(1)(B)(ii)(I) of the Act. We note that we do make extensive efforts to educate suppliers on the requirements they must meet through manuals, bulletins, seminars, and other means.

3. Compliance With Applicable Federal and State Licensure and Regulatory Requirements (Proposed § 424.57(c)(2))

Comment: One commenter stated the standard requiring that a supplier must operate its business and furnish Medicare covered items in compliance with all applicable Federal and State licensure and regulatory requirements is vague and excessive. Additionally, one

commenter stated that when Medicaid requirements are stricter than Medicare's, we should use the Medicaid requirements. One commenter also suggested that we allow no exceptions to State licensing requirements. One commenter recommended that consideration be given to waiving Federal standards where applicable State safeguards exist. The commenter added that complying with layers of rules adds confusion, cost, and diverts resources from clinical functions to administrative functions.

Response: This requirement is merely a restatement of the law—see section 1834(j)(l)(B)(ii)(I) of the Act. While we agree with the philosophy of requiring suppliers to meet the highest possible standards, it would introduce an increased level of complexity and administrative burden on providers operating in more than one State to meet different requirements in different States in order for the supplier to bill Medicare. For this reason, we have declined to pursue this option. We will take under consideration the possibility of granting waivers, from parts of the National Supplier Clearinghouse (NSC) review process (for example, site visits), to suppliers who are certified or licensed by States with sufficiently stringent requirements. We intend to allow no exceptions to applicable State licensing requirements.

4. Misrepresentation of Facts (Proposed § 424.57(c)(3))

The proposed standard states that a supplier must not make, or cause to be made, any false statement or misrepresentation of a material fact on an application for a billing number. A supplier must provide complete and accurate information in response to questions on its application for a billing number. Any changes in information supplied on the application must be reported within 35 days of the change.

Comment: One commenter stated that this standard needs further clarification. One commenter requested a definition of ''false statement'' and ''misrepresentation''. Also, one commenter suggested that the application form use simple, clear terminology to provide unambiguous guidance as to the information required.

Response: This standard is now located at § 424.57(c)(2). We are not providing definitions of the terms ''false statement'' and ''misrepresentation''. These are not technical terms and carry the common meaning normally associated with them. We will continue to develop the application form to be as clear, simple and unambiguous as possible. We note that we are revising the time frame allowed to a supplier to report changes to the information supplied on the application form. We are changing the proposed ''35 days'' to ''30 days'' to be consistent with the standard established through the application form. In addition to revocation of the billing number, if the supplier knowingly fills out the application incorrectly (for example, misrepresentation of facts or failure to report critical information) the supplier may be subject to civil and criminal penalties for submitting a false statement in connection with a health care matter.

5. Signature Used on a Supplier Number Application (Proposed § 424.57(c)(4))

Comment: One commenter suggested that HCFA should clarify that the signature does not have to be that of an officer of the company, but of a responsible official with first hand knowledge of the requirements listed on the application.

Response: We have not changed the proposed language because we believe that the specificity suggested by the commenter is addressed in the instructions for the DMEPOS application form (Form HCFA–855S). This standard is now located at § 424.57(c)(3). Those instructions specify that the application must be signed by an authorized representative of the supplier. An authorized representative is defined as ''The appointed official (for example, officer, chief executive officer, general partner, etc.) who has the authority to enroll the entity in Medicare or other Federal health care programs as well as to make changes and/or updates to the applicant's status, and to commit the corporation to Medicare or other Federal health care program laws and regulations.'' We believe this requirement protects the integrity of the supplier's information and makes the supplier accountable for its dealings with the Medicare program.

6. Providing Requested Information and Documentation (Proposed § 424.57(c)(5)).

This section, as published in the January 20, 1998 proposed rule, stated that a supplier must agree to furnish to HCFA all information or documentation HCFA requires, including—

- Information or documentation needed to process or adjudicate Medicare claims;
- Upon request, copies of contracts with third parties for furnishing Medicare covered items to Medicare beneficiaries;
- Upon request, documentation that it has advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and about the purchase option for capped rental equipment;
- Upon request, documentation that it has advised Medicare beneficiaries about Medicare covered items covered under warranty;
- Upon request, documentation demonstrating that it has delivered Medicare covered items to Medicare beneficiaries;
- Upon request, documentation that it maintains and repairs directly, or through a service contract with another company, Medicare covered items rented to beneficiaries;
- Upon request, proof of liability insurance; and
- Any other information required by this or other Medicare requirements.

Comment: Several commenters stated that the intent of the requirement to furnish copies of contracts (proposed § 424.57(c)(5)(ii)) is unclear. Several commenters also objected to requiring Health Maintenance Organizations (HMO) and Managed Care Organizations (MCO) contracts. Many commenters stated that Medicare has no right to ''Most Favored Nation'' treatment. One commenter requested clarification of the requirement pertaining to contracts for the delivery of items.

Response: Regarding the comments concerning copies of contracts with third parties for furnishing Medicare covered items to Medicare beneficiaries, we never intended to require information that would lead to ''Most Favored Nation'' treatment. (By ''Most Favored Nation'' treatment we believe the commenter is referring to a situation in which the seller gives the purchaser a better price than he or she gives any of the seller's other customers.) We think the commenter believes that we intend to gain special privileges for the Medicare program. We only expect assurance of the supplier's compliance with the provisions currently shown in § 424.57(c)(6). Medicare pays based on the lower of the supplier's actual change or the fee schedule. We also do not require copies of HMO/MCO contracts. We have clarified this standard to require only copies of contracts that a supplier has with other entities that deliver supplies to Medicare beneficiaries on the supplier's behalf or that provide supplies to the supplier for use in providing items to Medicare beneficiaries. This would include arrangements for providing componentry. Note, however, that the standard in proposed § 424.57(c)(3), requires a contract if the supplier has no

inventory of its own. This standard is now located at § 424.57(c)(4).

Comment: Several commenters questioned the type of documentation required by HCFA and whether beneficiaries would have to sign the documents. A number of commenters suggested that we remove redundancy by including the documentation requirements in the specific standards to which they apply.

Response: Neither the proposal nor this final rule specifies that the beneficiary has to sign documents under this requirement. As suggested by the commenters, we have moved most of the documentation requirements to the specific standards to which they apply, for clarity and to eliminate redundancy.

Comment: With respect to the standard requiring documentation advising beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment, one commenter objected to additional documentation requirements and paperwork because most beneficiaries prefer to purchase inexpensive and routinely purchased equipment. The commenter believed that HCFA would increase the cost of processing claims if patients rented equipment up to the purchase price, when by physician order, other medical documentation, or expected length of need, one would anticipate usage beyond the months required to reach the purchase price. In addition, the standard would require that the purchase option for capped rental equipment must be given to the beneficiary and documented. The commenter stated that a conversation is usually held with the beneficiary at the time they receive a capped rental item, in order to ensure that they understand the equipment is owned by the supplier until such time as the purchase option is offered in the tenth month. At the tenth month, the purchase option letter is forwarded to the beneficiary, and suppliers customarily make every effort to communicate with the beneficiary with regard to the purchase or continued rental option. The commenter believed that this section of the standards is unnecessary because the purchase option letter should fulfill the need for this documentation.

Response: We have not specified any additional documentation requirements and paperwork. A purchase option letter is one way to document compliance with this requirement. The requirements for the purchase option are spelled out in § 414.229(d) of this part and in section 1834(a)(7)(A) of the Act. It is not the intent of this regulation to address the purchase option requirement other than to state that it must be met and documented.

Comment: With respect to the standard requiring documentation advising beneficiaries about Medicare covered items covered under warranty, one commenter questioned whether the supplier has to obtain a signed statement to this effect from the beneficiary, pointing out that it would add to the cost of providing services to Medicare patients.

Response: A signed statement by the beneficiary is not necessary to comply with this requirement. We will also consider other documentation, such as delivery logs and copies of warranty information provided to beneficiaries.

Comment: With respect to the standard requiring documentation that the supplier has delivered Medicare covered items to Medicare beneficiaries, several commenters asked what is considered reasonable documentation for orthotic and prosthetic devices and services because there are no delivery slips as there are in DME.

Response: We believe it is reasonable to require a receipt for delivery of an orthotic or prosthetic device if they are not routinely provided items.

Comment: With respect to the standard requesting any other information required by this or other Medicare requirements, several commenters stated that this requirement needs limits, otherwise it will generate meaningless paper. Several commenters stated that we should follow the rules in 42 CFR 300 *et. seq.* concerning access to records and contracts between suppliers and subcontractors. One commenter stated that we cannot argue that we are entitled to greater access to information and documentation from Part B suppliers than from Part A suppliers' subcontractors. One commenter suggested that we add a requirement for telephone logs showing contacts with physicians, regarding physicians orders, and with beneficiaries and that we should require a list of delivery charges billed to Medicare or the beneficiary. One commenter stated that they had no objection to this requirement as long as the information required is referenced in the Medicare Carriers Manual and the DMERC supplier manual.

Response: We concur with much of the comment and are clarifying this requirement. Specifically, we are requiring that a supplier must agree to furnish to HCFA any information required by this or other applicable Medicare statute and regulations. We believe the references to 42 CFR 300ff should have been to 42 CFR 420.304, which contain the procedures that the Department of Health and Human Services follows in obtaining access to books, documents, and records in order to verify the costs of subcontractor services to a Medicare supplier. Although the procedures are reasonable for the purposes to which they are addressed, we believe that the changes we have made are a reasonable accommodation to purposes addressed in this regulation.

We disagree with the comment that we are not entitled to greater access to information from suppliers than from suppliers' subcontractors. The Congress specifically gave us authority with respect to DMEPOS suppliers in section 1834(j) of the Act.

Although we consider the maintenance of telephone logs for physician and beneficiary contacts good business practice, we are not prepared at this time to mandate their use because there may be other means to satisfy the requirements. We also are not prepared to require information on delivery charges. We will consider referencing the information required in the suggested manuals.

7. Scope of exclusions (Proposed § 424.57(c)(6))

Comment: With regard to the standard prohibiting a supplier from contracting with entities excluded from the Medicare program, one commenter stated that it may be necessary to contract with excluded entities in some situations—for example, if there is limited availability. Several commenters stated that it is unreasonable to expect that health care suppliers be able to accurately avoid such entities. They have no source to obtain this information and would, therefore, have to rely solely on the word of the subcontractor, which might not be accurate. Therefore, such policing activity should be the responsibility of HCFA. One commenter questioned the impact this requirement would have on inventory on-hand and servicing items under warranty.

Response: Information on excluded entities is available from the Government Printing Office and from the HHS Office of Inspector General (OIG). The OIG web site shows sanctioned entities. The web site address is: http//www.hhs.gov/progorg/oig/cumsan/index.htm. Allowing an excluded entity to contract with a Medicare supplier and indirectly receive Medicare funds because they are a source of items of limited availability would place the entity above the law because of this scarcity. We believe that the marketplace would soon adapt to fill this need, or that suppliers can be resourceful enough to find other

accommodations. We would also expect suppliers to take reasonable steps to determine if an entity with which they have a contractual arrangement is excluded or debarred. The standard is now located at § 424.57(c)(4).

8. Rental or Purchase Option (Proposed § 424.57(c)(7))

Comment: One commenter suggested that we revise the standard stating that a supplier must advise beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and of the purchase option for capped rentals. The commenter suggested that the standard give suppliers the discretion of making the decision on whether to rent or purchase based on the length of need estimated by the ordering physician. A related issue is that warranty information should be provided to beneficiaries at the time the title to an item transfers. Including warranty information in the explanation of capped rental may serve to further confuse beneficiaries. Additionally, several commenters suggested that we clarify that this standard applies only to the inexpensive or routinely purchased and capped rental DME categories—and not other items, such as home dialysis supplies and equipment.

Response: This standard is merely a reinforcement of our regulations at § 414.229(d) which refer to the purchase option on capped rental items, and the statute, at section 1834(a)(7) of the Act referring to payment for other items of DME. Since it is the beneficiary's decision whether to rent or purchase items, the supplier must explain the ramifications of this decision to the beneficiary at the required points in time to help the beneficiary make an informed decision. We are clarifying the standard in this final rule to state that it applies only when DME items are provided. This standard is now located at § 424.57(c)(5).

9. Warranties (Proposed § 424.57(c)(8))

This proposed standard states that a supplier must honor all warranties, expressed and implied under applicable State law. A supplier must not charge the beneficiary or the Medicare program for the repair or replacement of Medicare covered items or for services covered under warranty.

Comment: One commenter suggested that the supplier be required to give the beneficiary a list of the warranty periods for all products sold by that supplier. This provides the beneficiary with full disclosure and ensures basic supplier compliance with the standard. One commenter suggested that warranty information be provided to beneficiaries at the time the title to an item transfers. Another commenter requested that this documentation be provided as part of the delivery document, rather than a separate notice.

Response: With regard to the suggestion about providing a complete list of warranties, we think that this requirement is too onerous for larger suppliers. We do not specify at what point in time the warranty information is to be provided—at the time of delivery or at time of transfer of title both seem to be reasonable points of time. This standard is located at § 424.57(c)(6).

Comment: One commenter suggested that this standard covers equipment components only. The commenter noted that the cost of repair or replacement not only includes the cost of the actual component(s), but also the extensive labor to remove the old units, install the new, refit and possibly realign the device. In addition, the commenter stated that the warranty from the manufacturer covers only the component costs. A related comment stated that, while the warranty provisions that were set forth in the proposed rule may make sense for off-the-shelf items, they create anomalies for customized devices. Medicare fees for orthotics and prosthetics devices include evaluation, fitting, costs of components, and repairs due to normal wear and tear for 90 days when not necessitated by changes in the residual limb or the patient's functional capabilities. Medicare fees do not include professional service charges for repairs beyond 90 days even though the manufacturer's warranty for parts may exceed 90 days. The commenter suggested that it is in the best interest of the Medicare program to pay the labor cost to replace a component part of a device rather than replace the entire device; therefore, the rules should clarify that the professional service costs to evaluate, fit, disassemble and reassemble an orthotic or prosthetic component covered under a manufacturer's warranty is a covered service.

Response: Medicare does not cover maintenance and servicing of equipment when such services are covered under warranty. Medicare does not make separate payment for ''fees'' charged to process warranty items, paperwork, etc. These fees have been built into the reimbursement rate. We do make payments for maintenance and servicing of equipment after the warranty has expired.

10. Delivery (Proposed § 424.57(c)(9))

This proposed standard stated that a supplier must be responsible for the delivery of Medicare covered items to beneficiaries. A supplier must provide beneficiaries with necessary information and instructions on how to use Medicare covered items safely and effectively.

Comment: One commenter stated that the capability of providing proof of delivery exists only when someone is at a beneficiary's home to sign for each delivery. They recommended, instead, that proof of delivery may be maintained by drivers in their individual daily ''log worksheets,'' as well as in the bills of lading for the supplies and equipment that are delivered. One commenter suggested that we include persons who are hearing impaired or have other disabilities. One commenter stated that, in some situations, instructions on how to use Medicare covered items are provided by physicians or other facilities (an ESRD facility, for example), so that the supplier is not directly responsible. One commenter urged that we coordinate any further developments of these standards with the Food and Drug Administration (FDA), insofar as they involve product information that is made available to the public. One commenter stated that instructions often are verbal rather than written, so that documentation in the medical record should suffice.

Response: It is our intention that all beneficiaries, including beneficiaries who are hearing impaired, or have other disabilities, always receive the necessary information to safely and effectively use the items they receive. We recognize that this may be accomplished through different means. This requirement can be satisfied as long as the supplier can establish that the necessary training/instructions have been delivered at an appropriate time and in an appropriate manner. We are modifying the language of this standard to clarify that a supplier must document that it, or other qualified parties, has provided the beneficiaries with necessary information and instructions at an appropriate time. This standard is now located at § 424.57(c)(12). When questions arise on the use of products, we consult with the FDA.

11. Repairs (Proposed § 424.57(c)(11))

Comment: One commenter stated that the standard stating that a supplier must maintain and repair directly, or through contract, Medicare covered items it has rented to beneficiaries does not address the issue of whether a supplier may

function under the manufacturer's warranty and meet the standard, that is, instead of repairing the item, the supplier simply replaces the product and returns the item in need of repairs to the manufacturer. Another commenter questioned how this was to be documented and what level of repair is needed.

Response: We are modifying this standard, now located at § 424.57(c)(14), to allow suppliers to replace items and to clarify that the level of repair should be sufficient that the item functions as required and intended.

12. Return of Items (Proposed § 424.57(c)(12))

This proposed standard states that a supplier must accept returns from beneficiaries of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold).

Comment: One commenter suggested that the supplier should be required to maintain a log of all returns from beneficiaries of substandard or unsuitable items. This would be helpful to ensure compliance with the standard. Another commenter suggested that the standard needed a time limit. One commenter stated that, if an item is ordered by a physician and used by the beneficiary, a supplier should not be required to accept returns if the beneficiary no longer wants the item for reasons other than quality.

Response: While we agree that such a log would be helpful in verifying compliance, we believe that such a mechanism is not the only method for ensuring compliance. Therefore, we have not modified this standard. This standard is located at § 424.57(c)(15). With regard to the comments regarding time limits and reasons for return, this standard has been in place since December 11, 1995 with few problems. Since the revision suggested regarding time limit contained no suggestion for a time limit, and we received no other suggestions, we are retaining the requirement without change. We also believe the requirement is clear enough with regard to the intent that it is the quality or suitability of the item that must determine whether it should be returnable. If necessary, we will address this last issue through program instructions.

13. Physical Facility (Proposed § 424.57(c)(16))

This proposed standard states that a supplier must maintain a physical facility on an appropriate site. The physical facility must contain space for storing business records including the supplier's delivery, maintenance, and beneficiary communication records. For purposes of this requirement, a post office box or commercial mailbox is not considered a physical facility.

Comment: One commenter suggested that all suppliers need to be in compliance with the Americans with Disabilities Act and be beneficiary accessible. The requirement should apply to both commercial business and residential locations. The commenter also stated that the standard should require that the business have a sign and have hours of operation posted.

Response: Medicare suppliers must meet all laws and regulations that might apply to them, including any applicable provisions of the Americans with Disabilities Act. This is provided for under the standard at § 424.57 (c)(1), which requires that suppliers operate their business in compliance with all applicable Federal and State licensure and regulatory requirements. The requirements apply whether the supplier is located at a commercial location or a residence, because it is still a business. In response to the comment concerning the posting of a sign and hours of operation, we are adding to this final rule a statement at § 424.57(c)(8), that the supplier location must be accessible during reasonable business hours to beneficiaries and to HCFA, and must maintain a visible sign and posted hours of operation.

Comment: One commenter suggested that this standard should restate the guidance established in title XVIII of the Act that only one supplier number is allowed per location, regardless of whether multiple Tax Identification Numbers are obtained. This would eliminate numerous questionable supplier operations in which several supplier numbers are located at the same address. Another commenter suggested that HCFA develop protocols for conducting an on-site inspection of every entity that submits an initial application for a supplier number prior to approving the application. One commenter stated that some suppliers have no physical facility where they treat clients, placing the commenter at a competitive disadvantage because he had a large and ongoing investment in real estate, tools, supplies, equipment, etc. Several commenters suggested that HCFA exempt national concerns with central sites for record storage from this requirement, or more clearly define the objectives underlying this requirement as a performance specification, and allow companies to satisfy the government's needs in other ways. One commenter stated that warehouses should not be covered by the standards.

Response: As previously noted in describing our changes to § 424.57(c)(6), section 1834(j)(1)(D) of the Act states that the Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control. We are adding a sentence to state that in the case of a multi-site supplier, records may be maintained at a centralized location. A supplier must demonstrate a legitimate need for additional numbers. With regard to the physical site requirement, it is not our intention to ensure that no entities have competitive advantage over others. This is a natural by-product of the marketplace and business environment. Our intention is to ensure that we do business with legitimate entities who can provide safe and effective service to Medicare beneficiaries. We recognize that some suppliers may have multiple sites from which they do business, and may maintain records at one central site. Such suppliers may supply evidence of such recordkeeping, as long as the central site is an enrolled Medicare supplier site or represents a central function of a larger corporation of which the supplier is a part. We note that locations serving simply as warehouses are not subject to these standards.

14. Business Telephone (Proposed § 424.57(c)(17))

This proposed standard states that a supplier must maintain a primary business telephone at the physical facility. This telephone number must be listed under the name of the business and in the business portion of the local telephone company directory. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone, or an answering machine may not be used as the primary business telephone.

Comment: Several commenters strongly supported the standard requiring a supplier to maintain a business telephone at the physical facility where it does business. One commenter, however, noted that some suppliers maintain centralized customer service lines. A strict interpretation of the proposed standard would preclude this practice. Likewise, many suppliers maintain warehouse locations that are not used for retail customers. These types of locations should not be subject to the telephone standard because appropriately trained customer service representatives would not be available

to respond to the public's questions. The commenters suggested that HCFA should modify the proposed regulation to state that the telephone standard would not apply in the above scenarios. One commenter noted that telephone directories are normally published annually, contracts for inclusion are made several months in advance. Therefore, unless the regulations allow adequate time for suppliers to comply with the requirement, they will not be able to meet the standard.

Response: We recognize the practices of large organizations with regard to centralized telephone service as well as centralized records. Therefore, we are modifying the standard now at § 424.57(c)(9) to permit the use of toll free numbers that may not be listed in the business portion of the local telephone directory. Documentation of a paid application for a telephone listing will be considered to meet this requirement. However, the telephone number itself must be in place and available through the telephone company's directory services (information).

15. Liability Insurance (Proposed § 424.57(c)(18))

This proposed standard states that a supplier must have a comprehensive liability insurance policy that covers both the supplier's place of business and any and all customers and employees of the supplier.

Comment: One commenter suggested that, if we feel that minimum coverage of $500,000 is adequate for most businesses, then state it clearly as part of the standard requiring that suppliers have a comprehensive liability insurance policy. Experience has indicated that most suppliers and many agents are confused by the lack of such guidance. Another commenter suggested that $300,000 was adequate for the types of businesses under consideration. Several commenters supported this requirement and some suggested that suppliers of custom devices should be required to have professional and product liability insurance to protect the patient and themselves. One commenter stated that national, publicly traded companies with large assets maintain adequate insurance and reinsurance coverages through multiple carriers, but that coverage necessarily includes self-insured retentions. The commenter further stated that HCFA should make it clear that corporations with assets in excess of some fixed amount should not be required to change their insurance profile to satisfy this requirement. Another commenter stated that HCFA's general description of the required ''comprehensive liability insurance policy'' is inadequate. The commenter felt that it is necessary for a seller and supplier of medical equipment to have a Comprehensive General Liability Insurance Policy plus coverage for product liability and completed operations. The commenter, a national group of home medical equipment supply companies, stated that more than 80 percent of the claims it had received during the last 11 years involved alleged product deficiencies or failures.

Response: We are revising this standard, now at § 424.57(c)(10), to require a comprehensive liability insurance policy of at least $300,000. We agree that partial self insurance is an acceptable means of meeting this requirement for publicly traded companies with sufficient assets. However, we are not able at this time to sufficiently define how this would be accomplished. We are also revising this standard to refer to product and operation liability and clarifying that the insurance must remain in force at all times. In addition, we have revised the language to allow suppliers with multiple sites to procure an umbrella policy for each tax ID number.

16. Telephone Contact (Proposed § 424.57(c)(19))

This proposed standard states that a supplier of a Medicare covered item must agree not to contact a beneficiary by telephone regarding the furnishing of a Medicare covered item to the individual unless certain specified situations apply.

Comment: One commenter suggested that we add an exception to this standard. Specifically, the commenter suggested that we permit telephone contact if the supplier receives a referral from a medical professional involved in the patient's care.

Response: While this may be reasonable in some situations, we find it problematic in that it may have unintended consequences as a loophole by allowing suppliers to purchase ''referrals'' (client lists) from medical professionals. This standard is located at § 424.57(c)(11).

17. Prescription Drugs (Proposed § 424.57(c)(20))

This proposed standard states that only a supplier that is licensed by the State to dispense the drug may bill for a drug used as a Medicare covered supply with durable medical equipment or prosthetic devices. A supplier of drugs must bill and receive payment for the drug in its own name.

Comment: One commenter requested that we clarify that physicians may dispense and bill for drugs if permitted by the State. One commenter requested that we clarify that it is not necessary to have a pharmacy license in order to dispense drugs in connection with ESRD. One commenter requested that we clarify that suppliers may dispense oxygen with a prescription, consistent with FDA requirements. Several commenters supported this requirement completely.

Response: We are revising the standard, now at § 424.57(b)(4) to reflect that physicians may dispense and bill for drugs if authorized to do so under State law. There is no exception to the licensure requirement for dispensing drugs furnished in connection with ESRD.

C. Surety Bonds (proposed § 424.57(e))

We received many comments on the proposed surety bond provisions. Most of the commenters were opposed to the provisions citing costs as their major objection. Because we have decided to make extensive changes to this requirement and build on our experience with surety bond requirements for home health agencies, as well as a General Accounting Office Study of Medicare surety bonds, we have decided not to incorporate the provisions related to surety bonds in this final rule. Rather, we will issue the surety bond provisions as a proposed rule at a future date and will consider the comments in the development of that rule.

D. Other Comments

Comment: One commenter suggested that we require that suppliers be certified by appropriate national certification bodies, including the Board for Certification in Pedorthics, before they are eligible to dispense therapeutic shoes for diabetics.

Response: This is a good suggestion. Because of the potential impact on the supplier community and the need for public opportunity to comment, we will consider it for future revisions.

Comment: One commenter suggested that we implement a specialty code for pedorthics.

Response: This can be done administratively, without a regulation. If deemed feasible, we will consider it.

Comment: One commenter stated that no physician or hospital should own, in whole or in part, a DME supplier. This is a common practice and is strictly self-referral, which leads to corruption.

Response: Although the supplier standards do not address the issue of whether a physician may have an ownership interest in a DME supplier, the physician self-referral provisions in

section 1877 of the Act do address this issue. Under the physician self-referral provisions, a physician may not refer a Medicare or Medicaid patient for any ''designated health services'' listed in section 1877(h)(6) of the Act to an entity with which the physician or an immediate family member of the physician has a financial relationship, unless an exception applies. Designated health services include, but are not limited to, DME and supplies; parenteral and enteral nutrients (PEN); equipment and supplies; and prosthetics; orthotics, and prosthetic devices and supplies. A financial relationship may be through an ownership or investment interest or a compensation relationship. There are certain exceptions that apply to ownership interests. Some exceptions apply to compensation relationships, and some exceptions apply to both ownership and compensation. The physician referral prohibition also has an effect on Federal health care programs (including Medicaid and Medicare). For additional information about physician referral issues, please contact Joanne Sinsheimer at (410) 786–4620.

The current supplier standards do not address the issue of whether a hospital should own a DME supplier. We may consider this suggestion in future revisions because of the potential impact on the supplier community and the need for public opportunity to comment.

We want to draw your attention to the possibility that, based on the facts in each case, referrals may be prohibited under the anti-kickback statute. This statute applies to those who knowingly and willfully offer, pay, solicit, or receive remuneration to induce the furnishing of items or services paid for, in whole or in part, by any Federal health care program, including Medicare or Medicaid. For further information about the anti-kickback statute, please contact the Office of the Inspector General for HHS at (202) 619–0335.

Comment: One commenter suggested that HCFA ensure that the application form itself uses simple, clear terminology to provide unambiguous guidance as to the information required. The Form HCFA–855 should be reviewed by the OIG prior to issuance to ensure that the use of vague and ambiguous terminology is minimized and that instructions are clear.

Response: The Form HCFA–855 was reviewed by OIG prior to issuance. In addition, we are in the process of revising the Form HCFA–855. We will solicit input from all concerned parties, via a **Federal Register** notice prior to requesting the Office of Management and Budget's (OMB) approval of the revised form. We will consider detailed recommendations related to the revised Form HCFA–855.

Comment: One commenter stated that we should submit this rule to the Congress for a 60-day review in accordance with the Contract with America Advancement Act (P.L. 104–121).

Response: We are submitting a report to Congress for this rule pursuant to the congressional review procedures established by the Contract with America Advancement Act. We note that OMB has determined that this rule is not a major rule as defined by the Act.

Comment: One commenter stated that the proposed rule did not categorize the range of DMEPOS services and items. In addition, we did not provide in Table 2 a breakdown distribution by service or item speciality.

Response: The range of DMEPOS services and items are stipulated in various sections of the Act. The preamble of the proposed rule makes references to some of the sections of the Act. We do not have the data to provide a national geographic distribution of each type of service or item furnished by DMEPOS suppliers.

E. Orthotics/Prosthetics

Comment: Several commenters stated that orthotics and prosthetics suppliers should be licensed or certified. They believed that the provision of custom orthotic and prosthetic devices should be limited to facilities that are accredited by, or practitioners certified by, the American Board for Certification in Orthotics and Prosthetics or that meet equivalent educational and performance standards. One commenter suggested that we allow accreditation by the American Board for Certification in Orthotics and Prosthetics to serve as the equivalent of meeting the Medicare provider standards. One commenter stated that orthotics and prosthetics suppliers should be required to document each case in writing; should be required to give treatment alternatives in writing to each customer; should be required to give written cost estimates to each customer; and should be required to give a one year guarantee. Several commenters stated that orthotics and prosthetics suppliers should be required to have a bond. Several commenters suggested that orthotics and prosthetics suppliers should have separate standards from other suppliers.

Response: We will consider these suggestions in future revisions because of the potential impact on the supplier community and the need for public opportunity to comment.

IV. Request for Comment on Certain Supplier Standards

The Balanced Budget Act of 1997 (BBA) requires the Secretary to establish service standards for home oxygen suppliers. The U.S. General Accounting Office (GAO), in Report GAO/HEHS–99–56: Access to Home Oxygen Equipment, states that such service standards ''such as the frequency of maintenance visits and the level of patient education * * * would define what Medicare is paying for in the home oxygen benefit and what beneficiaries should expect from suppliers.'' We solicit comments as to what should comprise such supplier standards.

In addition, section 1861(s)(12) of the Act permits Medicare payment for extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if, among other things, the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary). We solicit comments as to what standards should be established for suppliers of such shoes and the qualifications to require of the fitting individual.

The Office of the Inspector General in a report titled ''Medicare Orthotics'' (OEI–02–95–00380) recommended that HCFA ''consider stricter standards for who is allowed to bill for orthotics, such as requiring professional credentials for orthotics suppliers.'' We solicit comments as to what standards should be established for suppliers of Medicare-covered orthoses. We also solicit comments as to whether similar standards should be applied to prostheses.

We also welcome comments as to whether and what kind of standards should apply for home infusion therapy, durable medical equipment such as wheelchairs, or any other item provided under the DMEPOS benefit.

V. Provisions of the Final Regulations

We are adopting the provisions set forth in the proposed rule with the exceptions noted in the Analysis of and Responses to Public Comments (section III. above) as well as the following change.

Throughout § 424.57, we are changing most of the references to ''billing number'' to ''billing privileges'', noting in § 424.57(b)(2) that billing privileges must be conveyed along with a billing number.

Also, we reiterate that although we do not intend to require suppliers with

current numbers to immediately certify to HCFA their compliance with these revised standards (they will do so when they reapply), it is important to note that as of the effective date of this regulation, all DMEPOS suppliers must comply with the standards as revised. We may revoke a supplier number if we find evidence that the standards are not satisfied.

VI. Collection of Information Requirements

This final regulation contains requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). However, all have been approved by OMB. The OMB approval numbers associated with these approved requirements are 0938–0717, DMEPOS Supplier Standards: Additional Information Collection Requirements, for which the approval expires on April 30, 2001, and 0938–0685, Medicare Carrier Provider/Supplier Enrollment Application, for which the approval expires on September 30, 2001.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

VII. Regulatory Impact Analysis

We have examined the impacts of this final rule under Executive Order 12866, the Unfunded Mandate Act of 1995, and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The costs associated with this rule are as follows:

- Liability insurance requirement (§ 424.57(c)(10)). We estimate that only 10 percent of DMEPOS suppliers do not already have liability insurance that meets this requirement. Based on Medicare data as of May 1999, 10 percent of the total DMEPOS suppliers is approximately 6,600 suppliers. We note that commenters on the proposed rule gave varying estimates of the cost of liability insurance. The range commenters suggested was between $1300 and $1800 annually. Using the highest estimate received ($1,800 annually), results in an approximate additional liability insurance cost of $11.9 million annually (6,600 times $1,800) to the DMEPOS industry due to this rule.
- Primary business telephone listed under the name of the business locally or toll-free for beneficiaries requirement (§ 424.57(c)(9)). We estimate that only 1 percent of DMEPOS suppliers do not already meet this requirement. Based on Medicare data as of May 1999, we determined that one percent of DMEPOS suppliers is 660 suppliers. Therefore, 660 times the approximate $600 annual cost of telephone service results in an additional cost of $0.4 million annually.

Total Cost = $11.9 Million + $0.4 = $12.3 million annually.

The Unfunded Mandates Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule has no consequential effect on State, local, or tribal governments.

Consistent with the Regulatory Flexibility Act, we prepare a Regulatory Flexibility Analysis (RFA) unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the Act, suppliers with annual sales of $5 million or less are considered to be small entities. (Individuals and States are not included in the definition of a small entity.) The RFA is to include a justification of why action is being taken, the kinds and number of small entities which the rule will affect, and an explanation of any considered meaningful options that achieve the objectives and would lessen any significant adverse economic impact on the small entities.

We believe that our standards will help bar fraudulent suppliers from participating in the Medicare program and provide an added level of protection to Medicare beneficiaries. Therefore, we expect to have an impact on an unknown number of persons and entities who will effectively be prevented from practicing their aberrant billing activities. The vast majority of suppliers will not be significantly affected by this rule. The reduction in program overpayments and the added level of protection to beneficiaries that we expect to achieve as a result of this rule justifies the relatively small burden the rule would impose on all small entities.

The following analysis, together with the rest of this preamble, explains the rationale for and purposes of the rule, details the estimable costs and benefits of the rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

A. Rationale and Purposes

We expect this rule to deter some entities that supply DME to Medicare beneficiaries from abusive billing practices or defrauding the Medicare program. For example, abusive practices include refusing to honor manufacturers' warranties or improperly installing equipment in Medicare beneficiaries' homes.

Fraudulent practices include billing the Medicare program for supplies that were not furnished. In a surprisingly large number of instances, when either the beneficiaries or HCFA attempted to contact suppliers alleged to have committed abuses, it was difficult to reach them because they did not have a fixed address or had closed the business and fled. Our experience has been that the market has failed to address these problems because of the motivation for unseemly profits, inadequate control by gatekeepers, and insufficient information on the part of Medicare beneficiaries to detect abuse. This market failure makes it necessary for HCFA to impose standards on DME suppliers and establish safeguards that enable the Medicare program to better protect beneficiary interests.

B. Characteristics of Suppliers

The single most striking characteristic of Medicare DMEPOS suppliers is their diversity. DMEPOS suppliers fill a business need and do it in a variety of ways. Some suppliers set out from the beginning to establish a business furnishing DMEPOS items; others evolve into being suppliers. For example, a firm dealing with the oxygen needs of the medical community may add a department that provides oxygen services and supplies as a medical supply as a logical extension of an existing business.

Similarly, a retail rental store may add wheelchairs or hospital beds and a pharmacy may add walkers to an inventory of otherwise unrelated commodities and use existing

advertisements to announce the availability of these items.

Based on the small size of some businesses, it is more characteristic that suppliers furnish a limited number of items in greater demand than to maintain a large inventory of items covering the gamut of covered DMEPOS items. Thus, the only things any two suppliers may have in common is their provision of DMEPOS items and their understanding that the activity will meet the needs of the business. Suppliers are in a position to direct their marketing activities to optimize their most profitable revenue sources, and in seeking to meet patient demand, can choose to provide only those items that meet their business objectives.

For purposes of the RFA, a small entity is one with annual revenues of less than $5 million. Medicare data indicates that more than 95 percent of all DMEPOS suppliers generate billings of less than $350,000 in Medicare revenues annually, and 99 percent less than $5 million.

C. Geographic Distribution of Suppliers

Individual patients may receive their durable medical equipment, supplies, and prosthetics either from a local supplier or from a regional or national concern that functions much like a mail order catalogue distribution center. As shown in Table 1, which is based on Medicare data as of May 1999, suppliers locate in areas where there is greatest demand, leaving other areas to be served by catalog, mail order or drop shipments. No States appear to be under served, and competition exists in large population areas, leading us to believe that the imposition of some additional standards will not have adverse effects on competition or on the availability of an adequate number of suppliers to meet patients' needs.

TABLE 1

State	Number of suppliers per State	Number of beneficiary per State	Beneficiary per supplier
AK	140	5500	39
AL	1960	151600	77
AR	1207	92400	77
AZ	1518	73100	48
CA	9612	469800	49
CO	1383	64200	46
CT	1552	79700	51
DC	167	10800	65
DE	274	17400	63
FL	7894	491200	62
GA	3180	186400	59
HI	345	16700	48
IA	1733	98400	57
ID	603	33500	56
IL	4212	268000	64
IN	2731	163800	60
KS	1386	76300	55
KY	2008	126200	63
LA	1996	115900	58
MA	2175	125200	58
MD	1837	102600	56
ME	636	38500	60
MI	3196	295600	92
MN	2001	105100	53
MO	2363	156100	66
MS	1094	96700	88
MT	608	28000	46
NC	3472	235000	68
ND	388	22200	57
NE	1026	48300	47
NH	520	24800	48
NJ	3291	172700	52
NM	539	34300	64
NV	553	27900	50
NY	6152	404700	66
OH	5101	294000	58
OK	1576	96700	61
OR	1316	61400	47
PA	5749	325900	57
RI	455	22000	48
SC	1666	124400	75
SD	458	23800	52
TN	2494	171600	69
TX	7021	408700	58
UT	690	36000	52
VA	2864	163300	57
VT	275	13600	49
WA	2268	107900	48
WI	2356	146200	62
WV	947	64400	68
WY	294	13300	45

TABLE 1

State	Number of suppliers per State	Number of beneficiary per State	Beneficiary per supplier
Total	109,782		

We note that the purpose of Table 1 is to illustrate the locations that provide durable medical equipment and supplies to Medicare beneficiaries. Many of these entities are members of chain organizations. While Table 1 indicates there are more than 109,000 suppliers, due to the affiliation of some suppliers with chains, as of May 1999, there were only 65,528 unique billing numbers. Hence, although in several sections of this preamble we mention 65,528 billing numbers, this reference and Table 1, which describes the more than 109,000 actual locations, describe the same universe of suppliers. According to an industry source, Medicare accounts for approximately 40 percent of the average DMEPOS supplier's revenue. The approximate percentage amounts for other revenue sources are 25 percent private insurance, 15 percent Medicaid, 10 percent institutional, and 10 percent private credit and cash sales. For calendar year 1997, Medicare program allowed charges amounted to $6.7 billion for DMEPOS items. We believe that for most suppliers any additional costs imposed by our standards would be outweighed by the benefits gained by continuing to be a Medicare DMEPOS supplier.

These standards should not result in changes in the number of legitimate business suppliers, because, as set forth below and elsewhere in this preamble, most requirements are logical extensions of good business practices that we believe currently are being met by the vast majority of suppliers.

D. Discussion of Alternatives

We believe it was the intent of the Congress to strengthen DMEPOS supplier standards to protect beneficiaries and ensure the integrity of the Medicare program. Therefore, we proposed expanded supplier standards, using as our statutory basis section 1834(j)(1)(B)(ii)(III) of the Act for liability insurance and section 1834(j)(1)(B)(ii)(IV) of the Act, which states that the supplier must meet such other requirements as the Secretary may specify. This final rule will provide a basis to better screen applicants and to revoke the supplier numbers of those who do not meet these standards.

For purposes of this impact statement, we have divided the supplier standards into the following two broad categories: statutory requirements and good business practices.

1. Statutory requirements

Liability Insurance—The statutory authority for § 424.57(c)(10) is section 1834(j)(1)(B)(ii)(III) of the Act. This rule requires a supplier to have comprehensive liability insurance, including product liability and completed operations in the case of a supplier that makes its own items, that covers the supplier's place of business and any and all customers and employees. Based on comments received on the proposed rule, we are requiring a minimum of $300,000 in coverage. Based on discussions with industry experts, we estimate that approximately 10 percent of all suppliers do not currently carry liability insurance. Based on comments received, we estimate the cost per year for a supplier to carry liability insurance in the amount of $300,000 would be no more than approximately $1,800. We believe that the $1,800 cost per supplier does not represent a significant economic impact on the estimated 10 percent of suppliers not currently carrying liability insurance. We also believe that it is good business practice to carry such insurance, as indicated by the fact that 90 percent or more of suppliers already do so.

2. Good Business Practices

Most of the supplier standards in this final rule deal directly with business practices. We do not believe that these standards will result in a significant impact on any sizeable number of legitimate suppliers. For these additional standards, the economic impact on most suppliers is negligible, although the benefits to the program and to the beneficiary will be greater. For example, the requirement at § 424.57(c)(6) that a supplier must not charge Medicare for repair or replacement of Medicare covered items or for services covered under warranty, coupled with the requirement that the supplier provide documentation, upon request, that it has advised Medicare beneficiaries about Medicare covered items covered under warranty, should result in claims for repairs, parts or replacement being made against the warranty, thus decreasing the monies paid by Medicare. The monies paid out by the program and the beneficiary also may decrease as a result of the requirement that the supplier inform the beneficiary of the rental or purchase option and the copay implications involved. More beneficiaries may elect to purchase their equipment, instead of renting for long periods of time.

In most instances, these standards do not exceed the usual business practices necessary for any retail business to succeed. In other words, we believe that a supplier that expects to conduct a successful business would already have in place procedures to meet these standards. We did not develop alternatives because we consider the final supplier standards to be basic requirements that a business would have to meet in order to provide satisfactory customer service and manage properly its inventory.

Under § 424.57(c)(9), a supplier is required to maintain a telephone that is used primarily for business purposes at its physical facility and is listed under the name of the business locally or toll-free for beneficiaries. In order to accept inquiries from potential customers, maintain relationships with current customers, and conduct business with contractors in today's business market, it is necessary that virtually every business have telephonic access. Beneficiaries also need access to their supplier in case they have a problem with or questions about their DMEPOS items.

We believe that this standard is currently met by nearly all legitimate businesses. However, we believe approximately one percent of DMEPOS suppliers currently do not meet the fixed telephone requirement. The estimated cost per year for any supplier to establish and maintain a telephone line to conduct business would be approximately $600 ($50 a month). Thus, the aggregate cost is negligible. We believe the benefits of full time access to the supplier will far exceed the minor economic impact on a supplier.

This requirement will help beneficiaries contact their suppliers in

the event of equipment problems and failures, and to resolve questions. Telephonic access to a supplier is also crucial so that the Durable Medical Equipment Regional Carriers may call and obtain additional information to process and pay claims.

E. Conclusion

As indicated elsewhere in this preamble, to the extent that we are imposing a burden, it is a necessary one. The public interest is best served by establishing safeguards that prevent suppliers from taking advantage of the current minimal supplier standards. It is by design that these standards would have the greatest impact on those suppliers that need to change the most. We believe that the loss of a few suppliers as a result of these supplier standards, for example those who operate out of a van or who do not provide a value added service, is far outweighed by the benefits of protecting the health and safety of beneficiaries and preserving the Medicare Trust Fund.

F. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, a small rural hospital is a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

VIII. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR chapter IV is amended as set forth below:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 424.57 is revised as follows:

§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.

(a) *Definitions.* As used in this section, the following definitions apply:

DMEPOS stands for durable medical equipment, prosthetics, orthotics and supplies.

DMEPOS supplier means an entity or individual, including a physician or a Part A provider, which sells or rents Part B covered items to Medicare beneficiaries and which meets the standards in paragraph (c) of this section.

Medicare covered items means medical equipment and supplies as defined in section 1834(j)(5) of the Act.

(b) *General rule.* A DMEPOS supplier must meet the following conditions in order to be eligible to receive payment for a Medicare-covered item:

(1) The supplier has submitted a completed application to HCFA to furnish Medicare-covered items including required enrollment forms. (The supplier must enroll separate physical locations it uses to furnish Medicare-covered DMEPOS, with the exception of locations that it uses solely as warehouses or repair facilities.)

(2) The item was furnished on or after the date HCFA issued to the supplier a DMEPOS supplier number conveying billing privileges. (HCFA issues only one supplier number for each location.) This requirement does not apply to items furnished incident to a physician's service.

(3) HCFA has not revoked or excluded the DMEPOS supplier's privileges during the period which the item was furnished has not been revoked or excluded.

(4) A supplier that furnishes a drug used as a Medicare-covered supply with durable medical equipment or prosthetic devices must be licensed by the State to dispense drugs (A supplier of drugs must bill and receive payment for the drug in its own name. A physician, who is enrolled as a DMEPOS supplier, may dispense, and bill for, drugs under this standard if authorized by the State as part of the physician's license.)

(5) The supplier has furnished to HCFA all information or documentation required to process the claim.

(c) *Application certification standards.* The supplier must meet and must certify in its application for billing privileges that it meets and will continue to meet the following standards. The supplier:

(1) Operates its business and furnishes Medicare-covered items in compliance with all applicable Federal and State licensure and regulatory requirements;

(2) Has not made, or caused to be made, any false statement or misrepresentation of a material fact on its application for billing privileges. (The supplier must provide complete and accurate information in response to questions on its application for billing privileges. The supplier must report to HCFA any changes in information supplied on the application within 30 days of the change.);

(3) Must have the application for billing privileges signed by an individual whose signature binds a supplier;

(4) Fills orders, frabicates, or fits items from its own inventory or by contracting with other companies for the purchase of items necessary to fill the order. If it does, it must provide, upon request, copies of contracts or other documentation showing compliance with this standard. A supplier may not contract with any entity that is currently excluded from the Medicare program, any State health care programs, or from any other Federal Government Executive Branch procurement or nonprocurement program or activity;

(5) Advises beneficiaries that they may either rent or purchase inexpensive or routinely purchased durable medical equipment, and of the purchase option for capped rental durable medical equipment, as defined in § 414.220(a) of this subchapter. (The supplier must provide, upon request, documentation that it has provided beneficiaries with this information, in the form of copies of letters, logs, or signed notices.);

(6) Honors all warranties expressed and implied under applicable State law. A supplier must not charge the beneficiary or the Medicare program for the repair or replacement of Medicare covered items or for services covered under warranty. This standard applies to all purchased and rented items, including capped rental items, as described in § 414.229 of this subchapter. The supplier must provide, upon request, documentation that it has provided beneficiaries with information about Medicare covered items covered under warranty, in the form of copies of letters, logs, or signed notices;

(7) Maintains a physical facility on an appropriate site. The physical facility must contain space for storing business records including the supplier's delivery, maintenance, and beneficiary communication records. For purposes of this standard, a post office box or commercial mailbox is not considered a

physical facility. In the case of a multi-site supplier, records may be maintained at a centralized location;

(8) Permits HCFA, or its agents to conduct on-site inspections to ascertain supplier compliance with the requirements of this section. The supplier location must be accessible during reasonable business hours to beneficiaries and to HCFA, and must maintain a visible sign and posted hours of operation;

(9) Maintains a primary business telephone listed under the name of the business locally or toll-free for beneficiaries. The supplier must furnish information to beneficiaries at the time of delivery of items on how the beneficiary can contact the supplier by telephone. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone, or an answering machine may not be used as the primary business telephone for purposes of this regulation;

(10) Has a comprehensive liability insurance policy in the amount of at least $300,000 that covers both the supplier's place of business and all customers and employees of the supplier. In the case of a supplier that manufactures its own items, this insurance must also cover product liability and completed operations. Failure to maintain required insurance at all times will result in revocation of the supplier's billing privileges retroactive to the date the insurance lapsed;

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(12) Must be responsible for the delivery of Medicare covered items to beneficiaries and maintain proof of delivery. (The supplier must document that it or another qualified party has at an appropriate time, provided beneficiaries with necessary information and instructions on how to use Medicare-covered items safely and effectively);

(13) Must answer questions and respond to complaints a beneficiary has about the Medicare-covered item that was sold or rented. A supplier must refer beneficiaries with Medicare questions to the appropriate carrier. A supplier must maintain documentation of contacts with beneficiaries regarding complaints or questions;

(14) Must maintain and replace at no charge or repair directly, or through a service contract with another company, Medicare-covered items it has rented to beneficiaries. The item must function as required and intended after being repaired or replaced;

(15) Must accept returns from beneficiaries of substandard (less than full quality for the particular item or unsuitable items, inappropriate for the beneficiary at the time it was fitted and rented or sold);

(16) Must disclose these supplier standards to each beneficiary to whom it supplies a Medicare-covered item;

(17) Must comply with the disclosure provisions in § 420.206 of this subchapter;

(18) Must not convey or reassign a supplier number;

(19) Must have a complaint resolution protocol to address beneficiary complaints that relate to supplier standards in paragraph (c) of this section and keep written complaints, related correspondence and any notes of actions taken in response to written and oral complaints. Failure to maintain such information may be considered evidence that supplier standards have not been met. (This information must be kept at its physical facility and made available to HCFA, upon request.);

(20) Must maintain the following information on all written and oral beneficiary complaints, including telephone complaints, it receives:

(i) The name, address, telephone number, and health insurance claim number of the beneficiary.

(ii) A summary of the complaint; the date it was received; the name of the person receiving the complaint, and a summary of actions taken to resolve the complaint.

(iii) If an investigation was not conducted, the name of the person making the decision and the reason for the decision.

(21) Provides to HCFA, upon request, any information required by the Medicare statute and implementing regulations.

(d) *Failure to meet standards.* HCFA will revoke a supplier's billing privileges if it is found not to meet the standards in paragraphs (b) and (c) of this section. (The revocation is effective 15 days after the entity is sent notice of the revocation, as specified in § 405.874 of this subchapter.)

(e) *Renewal of billing privileges.* A supplier must renew its application for billing privileges every 3 years after the billing privileges are first granted. (Each supplier must complete a new application for billing privileges 3 years after its last renewal of privileges.)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing, Administration.

Approved: March 29, 2000.

Donna E. Shalala,

Secretary.

Editorial Note: This document was received at the Office of the Federal Register September 29, 2000.

[FR Doc. 00–25495 Filed 10–10–00; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2205, MM Docket No. 00–76; RM–9809]

Digital Television Broadcast Services; Urbana, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of The University of Illinois Board of Trustees, licensee of noncommercial education Station WILL–TV, substitutes DTV Channel *9 for DTV Channel *33 at Urbana, Illinois. *See* 65 FR 30599, May 12, 2000. DTV Channel *9 can be allotted to Urbana at coordinates (40–02–18 N. and 88–40–10W.) with a power of 30, HAAT of 302 meters, and a DTV service population of 1005 thousand. With this action, this proceeding is terminated.

DATES: Effective November 16, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–76, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Illinois, is amended by removing DTV Channel *33 and adding DTV Channel *9 at Urbana.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–25359 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2104; MM Docket No. 00–109; RM–9899]

Radio Broadcasting Services; Ravenwood, MO; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning Radio Broadcasting Service; Ravenwood, MO published in the **Federal Register** on September 26, 2000, 65 FR 57745.

DATES: Effective October 30, 2000.

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

SUPPLEMENTARY INFORMATION: We published a document amending part 73 in the **Federal Register** of September 26, 2000, 65 FR 57745 (FR Doc. 00–24647). In that document, the Commission is correcting § 73.202(b) to reflect a change in the community in the Table of FM Allotments from Ravenwood, Florida to Ravenwood, Missouri. In rule FR Doc. 00–24647, published September 26, 2000, 65 FR 57745, make the following corrections:

PART 73—[CORRECTED]

§ 73.202 [Corrected]

1. On page 57745, in the third column, in amendatory instruction 2, in the second line, correct ''Florida'' to read ''Missouri.''

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–26013 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–144; FCC 00–288]

Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; compliance deadline requirement.

SUMMARY: In this document, the Commission sets forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's *Memorandum Opinion and Order on Remand (Remand Order)* and the appellate court decision, *Fresno Mobile Radio, Inc.* v. *FCC (Fresno).* We will allow incumbent wide-area 800 MHz SMR licensees using BI/LT channels an analogous construction period as we allowed eligible licensees of the *Remand Order* provided that such eligible licensees satisfy the conditions described herein and provide the requisite certification to the Commission.

DATES: Effective October 11, 2000. Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

FOR FURTHER INFORMATION CONTACT: Chris Gacek, Wireless Telecommunications Bureau, at (202) 418–1743; for additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Memorandum Opinion & Order (MO&O)* in PR Docket No. 93–144, adopted August 2, 2000, and released August 4, 2000, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The document is also available via the internet at: *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00288.doc.*

Synopsis of Memorandum Opinion and Order

I. Introduction

In this *Memorandum Opinion and Order (MO&O)*, we set forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order),* 14 FCC Rcd. 21679 (1999), published 65 FR 7751 (Feb. 16, 2000), which responded to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc.* v. *FCC (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

II. Summary of the Memorandum Opinion and Order

A. Background

The 800 MHz band is divided into four channel groups—SMR, General Category, BI/LT, and Public Safety, each with its own eligibility rules. 800 MHz SMR channels are designated for commercial use, while 800 MHz BI/LT channels are designated for non-commercial internal use by the licensee. Prior to 1995, in certain circumstances, the Commission allowed SMR licensees to apply for BI/LT channels under inter-category sharing rules, which the SMR licensee could then use commercially

despite the eligibility criteria that otherwise reserved these channels for private internal use. Inter-category sharing by SMR licensees was permitted if the BI/LT channel sought by the SMR licensee was unoccupied and if there were no SMR channels available in the licensee's service area.

On December 23, 1999, in response to a remand of its *800 MHz SMR Reconsideration Order*, 12 FCC Rcd. 9972 (1997), published at 62 FR 41225 (July 31, 1997), by the District of Columbia Circuit in *Fresno*, the Commission released its *Remand Order* determining that incumbent 800 MHz SMR licensees who had obtained extended implementation (''EI'') authority to build wide-area systems and who were within their extended construction periods at the time of the *Fresno* decision could apply construction requirements similar to those given to SMR Economic Area (''EA'') licensees in the 800 MHz band. In the *Remand Order*, however, we granted relief only to wide-area incumbents operating on SMR channels. We did not address the construction status of wide-area incumbents operating on non-SMR channels obtained through inter-category sharing, because we concluded that this issue was beyond the scope of the proceeding. We indicated that we would determine the construction requirements for wide-area licensees on these channels in WT Docket No. 99–87, the pending Balanced Budget Act (BBA) proceeding.

Upon further reflection, the Commission decided to determine the construction status of BI/LT channels used by wide-area 800 MHz SMR licensees in this proceeding which responds to the court's action in *Fresno,* rather than in the BBA proceeding. On March 2, 2000, therefore, we released a *Public Notice* seeking comment on whether we should adopt construction rules for wide-area incumbent 800 MHz SMR licensees using BI/LT channels that would be similar to those adopted in the *Remand Order* for wide-area SMR licensees using SMR channels. We also requested comment on the applicable construction requirements (*e.g.*, substantial service or population-based) for wide-area incumbent 800 MHz SMR licenses using BI/LT channels.

In response to that *Public Notice*, we received four comments and one reply comment. All but one of the commenters contend that wide-area 800 MHz SMR licenses using BI/LT channels should receive the same construction requirements established by the *Remand Order* for wide-area incumbents using SMR channels. Nextel Communications, Inc. (Nextel) and Southern Communications (Southern) maintain that regulatory parity requires giving wide-area 800 MHz SMR licenses using BI/LT channels the same flexible construction requirements as those given to other CMRS providers because they provide similar services. The American Mobile Telecommunication Association, Inc. (AMTA) maintains that all channels properly licensed to a wide-area SMR system under the Commission's rules are part of that system and should be subject to the same regulatory treatment.

B. Discussion

We conclude that wide-area incumbent 800 MHz SMR licensees operating on BI/LT channels are sufficiently similar to wide-area incumbent 800 MHz licensees operating on SMR channels that they should have the same flexibility with respect to construction requirements. The record demonstrates that some of the wide-area SMR licensees who received EI authorizations from the Commission are licensed to operate both on SMR channels and on BI/LT channels that they obtained through inter-category sharing for commercial use. In Southern's case, the vast majority of channels in its wide-area SMR system are BI/LT channels obtained through inter-category sharing. The record further demonstrates that wide-area SMR licensees such as Southern use inter-category BI/LT channels interchangeably with SMR channels, and that the BI/LT channels licensed on this basis are used to provide service that is similar, if not identical, to that provided on SMR channels by 800 MHz EA and incumbent wide-area SMR licensees. Accordingly, we agree with Southern, AMTA, and other supporting commenters that wide-area 800 MHz SMR licensees using BI/LT channels should be subject to the same construction requirements given to 800 MHz SMR EA licensees by our rules and to eligible wide-area SMR licensees by our *Remand Order.*

Recognizing that these licensees may already have constructed their systems in accordance with the requirements in place at the time (i.e., site-by-site, channel-by-channel), we will give eligible wide-area 800 MHz SMR licenses using BI/LT channels the option of complying with the site-specific construction requirements associated with their EI authorizations or applying the EA population coverage requirements to their wide-area systems. This option applies only to wide-area 800 MHz SMR licensees using BI/LT channels obtained through inter-category sharing. We believe that giving wide-area 800 MHz SMR licenses using BI/LT channels the choice between applying site-specific requirements or the EA coverage requirements will establish regulatory parity among all similarly situated wide-area 800 MHz SMR licensees.

We did not receive any comment on when the five-year construction period should begin for BI/LT channels licensed to wide-area SMR licensees that elect to apply the EA construction requirements. We therefore adopt the framework outlined in the *Remand Order*, which begins the construction period from the licensee's EI grant date. Therefore, an eligible wide-area SMR licensee that elects to apply the EA construction requirements to its BI/LT channels must have constructed and placed into operation a sufficient number of base stations to provide coverage to at least two-thirds of the population of its wide-area system, or must provide substantial service to the licensed area, within five years of EI grant plus the tolling period described.

For all licensees entitled to relief under this decision, we will add 546 days to their construction periods, representing the amount of time between the *Fresno* decision and the release of this order. Therefore, the applicable construction deadline for any eligible wide-area licensee that elects to apply the EA coverage requirements will be five years from the date of EI grant plus 546 days. Likewise, the applicable construction deadline for eligible licensees that do not elect the EA requirements will be 546 days after the EI deadline established in the *800 MHz Rejustification Orders*, 13 FCC Rcd. 1533 (WTB: 1997), recon., 12 FCC Rcd. 18349 (WTB: 1997).

A wide-area SMR licensee that is eligible for relief under this Order must certify in a filing with the Bureau that it has either met the EA construction requirements, as set out herein, or complied with the terms of its EI authorization. In addition to the certification, if a licensee chooses to meet the EA requirements for channels in the lower 230 channels using the substantial service option, it must demonstrate in the same filing with the Bureau how it is providing substantial service. All filings must be made within fifteen (15) days after the licensee's applicable construction deadline, as defined supra, or December 11, 2000, whichever is later.

When determining if an eligible licensee has met a specific coverage requirement (i.e., covering two-thirds of the population), the population should be measured using the licensee's wide-area ''footprint'' as established in the

licensee's EI rejustification submission. For this purpose, we adopt the guidelines in the *Remand Order*, i.e., the licensee should compute the population covered within its footprint on a county basis using 1990 U.S. Census information. In cases in which the footprint does not align with county boundaries, the licensee should include the entire population of the county if the licensee covers any portion of it.

III. Conclusion

For the reasons given above, any incumbent wide-area 800 MHz SMR licensee that uses BI/LT channels obtained through inter-category sharing and was still in its construction period as of the date of the *Fresno* decision may choose to apply either the existing site-by-site, channel-by-channel construction requirements or the alternative construction requirements set forth in this *MO&O*. Eligible licensees must certify in a filing with the Commission their compliance with one of the enumerated requirements within the later of fifteen days from their applicable construction benchmarks, as defined herein, or December 11, 2000.

IV. Procedural Matters

Paperwork Reduction Act of 1995 Analysis

Supplementary Information: This *MO&O* contains a modified information collection, which has been submitted to the Office of Management and Budget for approval. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection contained in this *MO&O,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments should be submitted to OMB and the Commission, and are due November 13, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0307.

Title: Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15.

Estimated Time Per Response: 2 hours.

Total Annual Burden: 30 hours.

Frequency of Response: Single response.

Total Annual Estimated Costs: $6,000. This cost includes an estimate that 100% of the respondents will hire an outside consultant at $200 per hour to prepare the information.

Needs and Uses: The Commission will use this information to determine whether wide-area SMR licensees have complied with the Commission's 800 MHz construction requirements for their respective systems.

Address: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to *fain_t@al.eop.gov*.

Regulatory Flexibility Act

The order, adopted by the Commission on August 17, 2000, contained a Supplemental Final Regulatory Flexibility Analysis that is now being retracted. As part of this submission we are including a Final Regulatory Flexibility Act Certification in its place. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [1] The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules.[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [3] More specifically the Commission has used the term ''small business'' in the wireless auction context as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.

We certify that this memorandum opinion and order (MO&O) will not have a significant economic impact on a substantial number of small business entities for the following reasons. First, the direct effect of this MO&O is to give eligible wide-area 800 MHz SMR licensees using BI/LT channels through inter-category sharing the option of complying with the site-specific construction requirements originally given with their EI authorizations or of complying with the more liberal EA population coverage requirements. For any small entity that would be able to exercise this new option as its buildout requirement, we believe there would be no detrimental impact or economic cost. In actuality, there might be a positive benefit to the licensees in this category in that small entities might find it easier to satisfy the buildout requirements.

Second, of the nine licensees directly effected by this order, three belong to extremely large corporations. Of the remaining six, all or none could be small business entities, our data do not permit a more accurate estimate at this time. However, as noted above, we believe that they will not experience a significant economic impact as a result of the revisions set forth in this *MO&O.*

Third, any indirect effects of this decision will be minimal. Currently, Commission rules do not allow the commercial use of BI/LT channels. The directly effected parties, mentioned above, obtained their BI/LT channels prior to 1995. Therefore, they are allowed to use those channels commercially. However, since 1995 users of newly available BI/LT channels are restricted to private mobile service use—that is, a non-commercial, non-business use. Consequently, even though the more liberalized build-out requirement adopted in this *MO&O* may lead to fewer channels reverting to the BI/LT channel pool because the licensees failed to timely construct, there will be no impact on small business entities because any such

[1] 5 U.S.C. 605(b).

[2] 5 U.S.C. 603(b)(3).

[3] 5 U.S.C. 601(4).

reversionary channels could not be licensed for commercial purposes.

Accordingly, we certify, pursuant to Section 605(b) of the RFA, that any effects flowing from this MO&O will not have a significant economic impact upon a substantial number of small entities, as that term is defined in the RFA. The Commission will send a copy of this *MO&O,* including a copy of this certification, in a report to Congress pursuant to SBREFA.[4] In addition, the MO&O and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[5]

V. Ordering Clauses

Accordingly, pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must comply with the terms of their extended implementation authorizations or apply the alternative construction requirements described herein.

Incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must certify in a filing with the Wireless Telecommunications Bureau their compliance with the construction requirements as described herein within the later of fifteen days after the licensee's applicable construction deadline or December 11, 2000.

The Commission's Consumer Information Bureau, the Reference Information Center, SHALL SEND a copy of this *MO&O,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25387 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

[4] 5 U.S.C. 801(a)(1)(A).

[5] 5 U.S.C. 605(b).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95–18; FCC 00–233]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 7, 2000 (65 FR 48174), the Commission published final rules in the Second Report and Order and Second Memorandum Opinion and Order, which revised the rules governing the 2 GHz Mobile-Satellite Service. In that document a new CFR section added in the Fixed Microwave Service inadvertently carried the same CFR section number used subsequently in a final rule published September 7, 2000. This correction renumbers the section published on August 7, 2000.

DATES: Effective September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453.

SUPPLEMENTARY INFORMATION: On August 7, 2000 (65 FR 48174), a new § 101.83 entitled ''Reimbursement of relocation expenses in the 2115–2150 MHz and 2165–2200 MHz bands'' was added. However, § 101.83 entitled ''Modification of station license'' was added on September 7, 2000 (65 FR 54155). This correction renumbers the section added on August 7, 2000 as § 101.99.

Accordingly, in FR Doc. 00–19478 published on August 7, 2000 (65 FR 48174), make the following corrections:

PART 101—[CORRECTED]

1. On page 48183, in the first column, in amendatory instruction 16, correct ''§ 101.83'' to read ''§ 101.99''.

2. On page 48183, in the first column, correctly designate ''§ 101.83'' as ''§ 101.99''.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–26012 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 173, 177

[Docket No. RSPA–00–7755 (HM–189Q)]

RIN 2137–AD47

Hazardous Materials Regulations: Editorial Corrections and Clarifications; Corrections

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

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to a final rule (RSPA–00–7755 (HM–189Q)), which was published in the **Federal Register** on Friday, September 29, 2000. That final rule amended the Hazardous Materials Regulations (HMR) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR.

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2000, RSPA published a final rule under Docket HM–189Q (65 FR 58614) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR. This amendment makes minor changes to correct wording omissions and typographical errors to the September 29 final rule, which was effective October 1, 2000.

Because the amendments do not impose new requirements, notice and public comment are unnecessary.

Correction

In rule document 00–24633, beginning on page 58614, in the issue of Friday, September 29, 2000, make the following corrections:

PART 172—[CORRECTED]

§ 172.101 [Corrected]

1. On page 58620, in column 3, in § 172.101, in paragraph (g), in line two, correct the wording ''§ 173.248'' to read ''§ 173.428''.

2. On page 58624, in § 172.101, in the table, for the entry ''*Organic peroxide type A, liquid or solid.*'' add the word ''Forbidden'' to column 3.

3. On the same page, in § 172.101, in the table, for the entry ''Phenylenediamines (*o-, m-, p-*)'' add a ''+'' in column 1.

§ 172.403 [Corrected]

4. On page 58626, in column 3, in § 172.403, in paragraph (a), in line 2, remove the two asterisks ''**'' immediately following the two section symbols.

5. On the same page, in column 3, in § 172.403, in paragraph (g)(2), in the last line, correct the wording ''(uCi))'' to read ''(uCi)''.

PART 173—[CORRECTED]

§ 173.7 [Corrected]

6. On page 58628, in column 3, in § 173.7, in paragraph (e), in line 13, add the wording ''packages of these'' immediately before the wording ''materials owned''.

§ 173.62 [Corrected]

7. On page 58629, in column 2, in amendatory instruction 41.b., in the fourth line, correct ''§ 178.83(b)'' to read ''§ 176.83(b)''.

PART 177—[CORRECTED]

§ 177.835 [Corrected]

8. On page 58631, in column 1, in § 177.835, correct paragraph (g)(3) introductory text to read as follows:

§ 177.835 Class 1 (explosive) materials.

* * * * *

(g) * * *

(3) It is packed and loaded in accordance with a method approved by the Department. One method approved by the Department requires that—

* * * * *

Issued in Washington, DC, on October 4, 2000, under authority delegated in 49 CFR part 1.

John P. Murray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 00–26000 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 980113011-0267-03; I.D. 061896A]

RIN 0648-AK34

Endangered and Threatened Species; Regulations Consolidation; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule pertaining to the consolidation and reorganization of existing regulations regarding implementation of the Endangered Species Act which was published in the **Federal Register** on March 23, 1999.

DATES: Effective October 11, 2000.

ADDRESSES: Donna Wieting, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Caroline Good, phone: (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

In the final rule, titled Endangered and Threatened Species; Regulations Consolidation; Final Rule, published in the **Federal Register** on March 23, 1999,(64 FR 14052), three errors were made in identifying the eastern population of Steller sea lions.

NMFS is correcting these errors and is making no substantive change to the document in this action.

Need for Correction

As published, the final regulations contain errors which misidentify the stock parameters of the eastern population of the Steller sea lion (*Eumetopias jubatus*).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: October 4, 2000.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 223 is corrected by making the following correcting amendments:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. Revise paragraph (c) of § 223.102 to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(c) Marine mammals. Guadalupe fur seal (Arctocephalus townsendi); Steller sea lion (*Eumetopias jubatus*), eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude.

* * * * *

[FR Doc. 00–26082 Filed 10–10–00; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 65, No. 197

Wednesday, October 11, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 212

[EOIR No. 127P; AG Order No. 2329–2000]

RIN 1125–AA29

Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: On July 18, 2000, at 65 FR 44476, the Department of Justice published a proposed rule in the **Federal Register** to create a uniform procedure for applying the law as enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule would allow certain lawful permanent residents in deportation proceedings that commenced before April 24, 1996, to apply for relief from deportation pursuant to section 212(c) of the Immigration and Nationality Act (INA). In response to requests from the public, and to ensure that the public has ample opportunity fully to review and comment on the proposed rule, this document reopens the public comment period for an additional time period, through October 18, 2000.

DATES: Written comments must be submitted on or before October 18, 2000.

ADDRESSES: Please submit written comments, original and two copies, to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470. Comments are available for public inspection at the above address by calling (703) 305–0470 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

Dated: September 30, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–26081 Filed 10–10–00; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG58

List of Approved Spent Fuel Storage Casks: HI–STAR 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI–STAR 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [i.e., reactor startup sources], and clarifications, editorial corrections, and other minor changes to cask design information and drawings. The CoC was revised to require users to prepare written acceptance tests and a maintenance program consistent with the technical basis described in the Safety Analysis Report (SAR). In addition, the amendment includes two minor changes to the HI-STAR 100 listing in the regulations. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license.

DATES: Comments on the proposed rule must be received on or before November 13, 2000.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (*http://ruleforumllnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined through September 21, 2000 at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000 the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), that provides text and image files of the NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML003726991. For more information, contact the NRC Public Document Room reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail *GEG1@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently with a direct final rule. The direct final rule will become effective on December 26, 2000. However, if the NRC receives significant adverse comments on the direct final rule by November 13, 2000, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1008 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1008
Initial Certificate Effective Date: October 4, 1999
Amendment Number 1 Effective Date: December 26, 2000.
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI–STAR 100 Cask System
Docket Number: 72–1008
Certificate Expiration Date: October 4, 2019
Model Number: HI–STAR 100

* * * * *

Dated at Rockville, Maryland, this 20th day of September 2000.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Acting Executive Director for Operations.

[FR Doc. 00–25914 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–07]

Proposed Revision of VOR Federal Airway and Jet Route; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Very High Frequency Omnidirectional Range (VOR) Federal Airway 480 (V–480) and Jet Route 120 (J–120) in Alaska by adding a routinely used route segment between Mt. Moffett and St. Paul Island, AK. The FAA is proposing to revise these routes for the following reasons: The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route would add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; this amendment would establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and the addition of this route would improve the management of air traffic operations and thereby enhance safety.

DATES: Comments must be received on or before November 27, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 00-AAL–07, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00-AAL–07.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register's** electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to revise V–480 and J–120 in Alaska. This proposed revision would convert an uncharted nonregulatory route segment to a VOR Federal airway and jet route by adding a segment to V–480 and J–120 between Mt. Moffett and St. Paul Island, AD. Presently, this segment is an uncharted route that is used by air carrier and general aviation aircraft. The FAA is proposing to amend V–480 and J–120 for the following reasons: (1) The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route would add to the IFR airway and route infrastructure in Alaska; (2) pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment would establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) the addition of this route would improve the management of air traffic operations and thereby enhance safety.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and Alaskan VOR Federal airways are published in paragraphs 2004 and 6010(b), respectively, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Jet route and the Alaskan VOR Federal airway listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–120 [Revised]

From Mt. Moffett, AK, NDB via St. Paul Island, AK, NDB; Bethel, AK; McGrath, AK; Fairbanks, AK; Fort Yukon, AK; to the Barter Island, AK, NDB.

* * * * *

Paragraph 6010(b)-Alaskan VOR Federal Airways

* * * * *

V–480 [Revised]

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL, Kipnuk, AK; Bethel, AK, McGrath, AK, Nenana, AK; to Fairbanks, AK.

* * * * *

Issued in Washington, DC, on September 29, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–25640 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–029–EXTb; FRL–6872–9]

Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the attainment date for the San Diego serious ozone nonattainment area from November 15, 1999 to November 15, 2000. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 1999. In the final rules section of this **Federal Register**, we are approving the State's request as a ''direct final'' rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule.

If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive substantive adverse comments which have not already been responded to, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a

second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before November 13, 2000.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning, Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*.

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

Dated: September 12, 2000.

Keith A. Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 00–25927 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 83–484: FCC 00–360]

Repeal or Modification of the Personal Attack and Political Editorial Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rules: Request for Supplemental Information.

SUMMARY: This document concerns a 60-day suspension of the political editorial and personal attack rules and asks parties to submit evidence on the effects of the suspension 60 days after the suspension period ends. The Commission adopted the *Order and Request to Update Record* in response to the D.C. Circuit Court of Appeals' decision in *Radio-Television News Directors Ass'n* v. *FCC,* 184 F.3d 872 (1999). The intended effect of this action is to enable the Commission to obtain a better record on which to review the rules.

DATES: Parties may submit evidence on the effect of the suspension of the rules on or before January 31, 2001, and replies may be submitted on or before February 15, 2001.

ADDRESSES: Address all evidence concerning this suspension to the Commission's Secretary, Communications Commission, 445 Twelfth Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order and Request to Update* in MM Docket No. 83–484, FCC 00–360, adopted on October 3, 2000, and released on October 4, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00360.pdf on the Commission's Internet site at *www.fcc.gov*.

Electronic Access and Filing Addresses

1. Information may be filed using the Commission's Electronic Comment Filing System or by filing paper copies via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail information, parties should send an e-mail to *ecfs@fcc.gov,*, and should include the following words in the body of the message, ''get form, <your e-mail address>.'' A sample form and directions will be sent in reply.

Paperwork Reduction Act

2. The actions taken in this *Order and Request to Update Record* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), and found to request new or modified reporting or recordkeeping by the public. It will be submitted to the Office of Management and Budget for emergency review under Section 3507 of the PRA.

Summary of Order and Request To Update Record

3. The Commission adopts an *Order and Request to Update Record* (Order) in response to the D.C. Circuit Court of Appeals' (D.C. Circuit) decision in *Radio-Television News Directors Ass'n* v. *FCC,* 184 F.3d 872 (1999) (*RTNDA*). In the *Order,* the Commission suspends the political editorial and personal attack rules, 47 CFR 73.1920 and 73.1930, for 60 days to enable the Commission to obtain a better record on which to review the rules. These rules as they apply to cable television system operators, 47 CFR 76.209(b), (c), and (d), are also within the scope of this proceeding. The court recognized that the Commission considered the record previously before it to be ''old and possibly flawed'' and encouraged the Commission to ''consider modern factual and legal developments.'' This brief suspension, which the Commission hopes will provide useful data on the effect of the rules, will allow it ''to work from a relatively clean procedural slate,'' as the court suggested. In addition, the Commission takes this opportunity to make clear that much of the discussion in *Syracuse Peace Council,* 2 FCC Rcd 5043 (1987), *recon. denied,* 3 FCC Rcd 2035 (1988), *aff'd sub nom. Syracuse Peace Council* v. *FCC,* 867 F.2d 654 (D.C. Cir. 1989), *cert. denied,* 493 U.S. 1019 (1990), accompanying the Commission's repeal of the fairness doctrine has been repudiated. The Commission also asks those parties to this proceeding who believe that it is not possible to ''distinguish[] political editorials and personal attacks * * * from subjects formerly covered by the fairness doctrine'' to consider whether the rules at issue should be extended to cover matters that previously were subject to the fairness doctrine.

4. The lengthy history of this proceeding was summarized by the D.C. Circuit last year in its opinion in *RTNDA.* In 1983, after the National Association of Broadcasters (NAB) filed a petition asking the Commission to repeal the political editorial and personal attack rules, the Commission issued a Notice of Proposed Rulemaking (''*NPRM*'') proposing to repeal or modify the rules (48 FR 28295, June 21,1983). Because the *NPRM* also sought comment on these rules as they apply to cable television system operators, the suspension adopted herein will apply to the cable as well as the broadcast rules and the Commission welcomes comments on the rules as they apply to cable operators as well as broadcasters. The Commission subsequently stopped

enforcing the related fairness doctrine in 1987, in *Syracuse Peace Council.* For nearly a decade after the repeal of the fairness doctrine, the Radio-Television News Directors Association (RTNDA) and the NAB (''the Broadcasters'') did not vigorously press their attack on the political editorial and personal attack rules, but they renewed their challenge in 1996. Since then, the Commission has spent a considerable amount of time on this proceeding, but has twice deadlocked, despite significant changes in membership.

5. After the second deadlock, the D.C. Circuit considered the Broadcasters' arguments concerning the validity of the rules. As a threshold matter, the court rejected the Broadcasters' contention that the Joint Statement of Commissioners Susan Ness and Gloria Tristani favoring retention of the rules, 13 FCC Rcd 21901 (1998) (Joint Statement), should not be accorded deference as the decision of the Commission. To the contrary, the court held that ''a deadlocked vote on a proposal to repeal a rule constitutes reviewable, final agency action in support of the status quo,'' and that it was appropriate to ''accord the Joint Statement the same respect normally accorded agency decisions in rulemaking proceedings.'' The D.C. Circuit also rejected the Broadcasters' principal argument on the merits, which was that ''the *Syracuse* order of its own force drags the political editorial and personal attack rules down with the fairness doctrine to which they were moored.'' Rather, the court explained, in agreement with the Joint Statement, ''there is nothing inherently inconsistent about preserving the two challenged rules despite abrogation of the fairness doctrine.'' The court also declined to review the Broadcasters' contention that the rules unlawfully ''chill protected expression, impose undue administrative burdens on broadcasters, and have been rendered obsolete by the proliferation of new media technologies and outlets.'' At the same time, the court assumed that the rules ''interfere with editorial judgment'' to some extent, even though the record was not entirely clear on the extent of that interference.

6. After rejecting the Broadcasters' principal argument, the court remanded the matter to the Commission, explaining that the Joint Statement had failed to square the rationale underlying the Commission's decision to repeal the fairness doctrine with the retention of the rules at issue. Generally, the court said that, ''[a]fter 1987, the instant rulemaking should have involved distinguishing political editorials and personal attacks, which are regulated, from subjects formerly covered by the fairness doctrine but that have been deregulated, such as non-editorial political commentary, editorials on political issues aside from candidate endorsements, and non-personal attacks.'' The court found, however, that the Joint Statement was ''mostly silent on this salient question, choosing instead to rebut specific attacks against the rules.'' More specifically, the court noted that ''the Joint Statement recognizes that the current rules are broader than their rationales suggest,'' explaining, for example, that ''the fact that a national news network rarely covers local state assembly races may explain why a right of reply is necessary on a local network affiliate for a state assembly candidate maligned by that affiliate, but it does not follow that the local affiliate must also be the venue for a right of reply involving a presidential candidate.''

7. In addition, the court noted that, although the Joint Statement criticized the Broadcasters for relying on ''old and possibly flawed data to show a chilling effect on editorializing, the FCC offered no updated or more credible information to the contrary.'' Recognizing the staleness of the record, the court encouraged the Commission ''to work from a relatively clean procedural slate, consider modern factual and legal developments, and obtain comments on specific proposals to modify the rules.'' The court thus urged the Commission ''to supplement its analysis'' with evidence superior to that which had previously been supplied. The court closed its opinion by directing the Commission to ''act expeditiously.''

8. In the *Order,* the Commission states that it has been struggling to implement the court's decision. The Commission explains that this has been difficult because, as the court recognized, the Chairman had recused himself from this proceeding, two commissioners would repeal the rules, and the two remaining commissioners have authority to defend ''the status quo'' but questionable authority to take affirmative steps such as initiating a new rulemaking proceeding or proposing modifications of the rules. In response to a petition filed by the Broadcasters seeking recall of the mandate or the issuance of a writ of mandamus, the D.C. Circuit on July 24, 2000, ordered that the petition be held in abeyance until September 29, 2000, while inviting the Broadcasters to ''supplement their requests and seek whatever action they deem appropriate from the court'' if the Commission has not acted by that date. The Commission states in the *Order* that it understands, and shares, the court's apparent frustration with the Commission's inability to resolve this matter.

9. On account of the continuing deadlock, the Chairman decided, after the court's order of July 24, to participate in this matter for the purpose of initiating a proceeding to update the record. The existing record is stale and devoid of empirical evidence, except for the 1982 survey criticized in the Joint Statement. In fairness to the Broadcasters, it is difficult to see how they could present evidence that is not susceptible to criticism that it is biased and self-serving, while the rules are in effect, concerning what they would do if the rules were not in effect. To develop a better record, therefore, the Commission has decided to suspend the rules for 60 days following the adoption of this *Order* to create a better record upon which to review the rules at issue. Of course, elections will be held during the 60-day period, making it an ideal time to determine how broadcasters are affected by the political editorial rule. While less obvious, it is also an ideal time to obtain evidence regarding the effect of the personal attack rule, which was established in a series of cases in the early 1960s involving personal attacks on candidates and elected officials.

10. If the Broadcasters intend to continue to challenge the rules, the *Order* requests they present evidence 60 days after the suspension ends reporting on their actions while the rules were suspended, addressing how that evidence supports their contention. Parties will also have an opportunity to submit replies 15 days later. For example, the Broadcasters have contended that elimination of the political editorial rule would lead to a dramatic increase in the number of editorials broadcasters present, on account of the alleged chilling effect of the rules. Suspension of the rule will permit the Commission to test that prediction, and the *Order* requests the Broadcasters to supply it with the information necessary to do so. More specifically, the Commission will want information on the number of political editorials run during the suspension of the rules and comparative information concerning the number of editorials run during prior election cycles. To respond to the court's concerns, the Commission also will need information concerning the nature of the elections on which licensees editorialize: are they, for example, state assembly races or the presidential election? Whether other media outlets editorialized on these races would also be useful in

determining whether the rules should be modified rather than eliminated or retained in full. For example, using the D.C. Circuit's example, it is possible that a right of reply may be warranted in state assembly races but not in presidential elections because the relative merits of the presidential candidates will be thoroughly aired by the media in any event but the relative merits of state assembly candidates will not be discussed by the media in any detail.

11. The *Order* asks the Broadcasters to present evidence relevant to the court's other concerns as well. For example, with respect to the political editorial rule, the court stated that ''[i]f broadcasters want to use public resources overtly to push a private agenda by advocating a result in an election, a right of reply might be a minimally intrusive means of countering a licensee's government-granted monopoly on access to the resource,'' but questioned whether the same could not be said concerning ''editorial[s] about tax policy,'' and directed the Commission ''to explain why editorials about candidates are particularly appropriate subjects for regulation.'' To respond to the court's concerns, the Commission needs information concerning broadcasters' editorial practices more generally. Among other things, the Commission is interested in whether and the extent to which broadcasters editorialize on topics unrelated to political campaigns and whether the rate of such editorials is increasing or decreasing. The *Order* also seeks information regarding the factors relevant to a broadcaster's decision to editorialize. The Broadcasters are in the best position to provide such information and the Commission expects them to do so.

12. In addition to providing information responsive to the court's concerns, the *Order* asks the Broadcasters to provide information relevant to issues raised in the Commission's prior decisions. For example, in their Joint Statement, Commissioners Ness and Tristani indicated their willingness to consider modifying the political editorial rule such that it might shift the burden to the candidates to request time from the station or ''would only trigger an obligation to furnish time to major candidates or major party supporters.'' A modification to include only major candidates or major party supporters would be consistent with the Supreme Court's recognition in *Arkansas Educational Television Ass'n* v. *Forbes*, 523 U.S. 666 (1998), that broadcasters may in good faith decide that in some cases the inclusion of third-party candidates in debates detracts from their usefulness. These modifications also would be responsive to the Broadcasters' claims that the rule is burdensome, because it would reduce the burden. In any event, the *Order* asks the Broadcasters to report whether those licensees who editorialize while the rules are suspended decide to offer response time to some candidates but not others. The Commission hopes that parties will provide as objective and useful information as possible.

13. With respect to the personal attack rule, the Broadcasters similarly should attempt to obtain information that will be useful in evaluating the effect of the rule. However, the *Order* asks broadcasters to collect information regarding complaints concerning personal attacks that are received while the rule is suspended, and to compare the number and nature of the complaints made during those 60 days to a comparable period while the rule was in effect. The *Order* seeks comment on ways that any undue burdens caused by the rule could be reduced. To assist the Commission in evaluating whether the personal attack rule is overly burdensome, as argued by the Broadcasters, the *Order* seeks information on what steps broadcasters take to comply with the notification requirements. For example, in their Joint Statement, Commissioners Ness and Tristani indicated their willingness to consider modifying the personal attack rule to eliminate the existing notification requirements and make the rule request-driven.

14. The *Order* encourages those groups that have advocated retention of the rule to do the same—that is, to collect evidence relating to personal attacks that they would have challenged had the rule not been suspended. In that connection, the Commission notes that some parties have argued that the rule should be expanded to cover situations to which it does not currently apply, and it would welcome any information regarding personal attacks made, for example, during ''bona fide news interviews,'' which currently are not subject to the rule. In addition, the Commission would be particularly interested in learning of personal attacks made in connection with the upcoming elections.

15. In responding to this *Order*, the Commission encourages parties to present the sort of careful analysis the D.C. Circuit expects. Although it cannot rule out the possibility that the rules will be retained exactly as written or eliminated entirely, the Commission believes it would profit most at this point from hearing arguments directed to how the rules should be modified to achieve their fundamental purposes with minimal burden, consistent with the D.C. Circuit's opinion in this case and our decisions in other cases.

16. Some parties, however, may contend that it is not possible to ''distinguish[ ] political editorials and personal attacks * * * from subjects formerly covered by the fairness doctrine.'' For that reason, the *Order* asks the Broadcasters, at the time they file their report on their actions while the rules were suspended, to report also on the effects of the repeal of the fairness doctrine, and the Commission will invite the other parties to respond to that report. In last year's opinion, the D.C. Circuit described *Syracuse Peace Council* as ''agency precedent for declining to use the FCC's power to redress a market failure in provision of balanced coverage of important issues,'' and directed the Commission to provide ''clear, cogent explanations'' for requiring a right of reply in some situations but not others. Previously, on account of its deadlock, the Commission has been constrained to consider how to reconcile the political editorial and personal attack rules with its decision in *Syracuse Peace Council*. In that connection, those parties who believe that Section 315 of the Communications Act, as amended, requires the Commission to enforce some obligation on broadcasters ''to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance'' should comment on how their reading of the statute bears on the issues before us.

17. The *Order* therefore invites the Broadcasters, and the other parties as well, to consider the court's various statements to the effect that it is difficult to distinguish political editorials and personal attacks from ''many issues of public concern,'' and to address whether it would be appropriate to extend the reach of the rules at issue. For example, the court noted that ''a network has more freedom to endorse a ballot initiative than to endorse a candidate championing such an initiative,'' and concluded that ''[t]he FCC has not articulated a basis for the distinction.'' If those issues may not be distinguished on a principled basis, it may be that a right of reply is warranted in both cases. In addition, the Commission encourages the parties to consider whether the D.C. Circuit has identified a distinction between local and national issues that the Commission ought to examine in more detail. That is, as explained in the Joint Statement, the

explosion in media outlets relied upon in *Syracuse Peace Council*, and particularly its reliance on cable channels, may be relevant to national issues but not to local issues.

18. The Commission does not intend to prejudge that or any other issue. Rather, while suspending the political editorial and personal attack rules, the Commission asks the Broadcasters to report to the Commission on the various matters discussed in this *Order*. With a fresh record, the Commission will consider how to reconcile its decision in *Syracuse Peace Council* with the rules at issue. It is possible that the Commission will decide to modify the rules at issue, or to modify its decision in *Syracuse Peace Council*, or both.

19. In that regard, it is appropriate to make clear that the dicta in *Syracuse Peace Council* regarding the appropriate level of First Amendment scrutiny has been rejected by Congress, this Commission, and the courts. Although the Commission based its decision in *Syracuse Peace Council* largely on its view that the standard of *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969), should be abandoned, the D.C. Circuit did not affirm on that basis. Subsequently, in enacting the Children's Television Act of 1990 (CTA), Congress made clear that broadcasters should be subject to public interest obligations reviewed under the *Red Lion* standard, and Congress's views on that matter are entitled to ''great weight.'' The Commission agreed that *Red Lion* sets the appropriate standard of review, as it made clear in its Order implementing the CTA, which expressly repudiated the dicta from *Syracuse Peace Council*. Moreover, the D.C. Circuit not only applied but extended *Red Lion* in 1996 in *Time Warner Entertainment Co.* v. *FCC,* 93 F.3d 957 (1996). In that case, the court upheld under the *Red Lion* standard the constitutionality of Section 335 of the Communications Act, as amended, which requires operators of direct broadcast satellite (DBS) systems to set aside at least four percent of their channels for noncommercial educational programming.

20. The fundamental error of the Commission's decision in the portion of *Syracuse Peace Council* that has been repudiated was its confusion of the rationale underlying the fairness doctrine with the basis for public interest regulation of the broadcast spectrum. The fairness doctrine originated at a time when there were only three major television networks, and the proliferation of television stations and the development of cable television reasonably led the Commission to reevaluate the need for the fairness doctrine. The standard of *Red Lion*, however, was not based on the absolute number of media outlets, but on the fact that the spectrum is a public resource and ''there are substantially more individuals who want to broadcast than there are frequencies to allocate.'' As both the U.S. Supreme Court and the D.C. Circuit have explained, ''[a] licensed broadcaster is 'granted the free and exclusive use of a valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.' '' The D.C. Circuit explained in remanding the political editorial and personal attack rules that application of the *Red Lion* standard does not mean that any particular obligation is therefore warranted. Rather, the Commission must provide a reasonable explanation as to why it chooses to impose certain public interest obligations and not others. But the long-standing basis for the regulation of broadcasting is that ''the radio spectrum simply is not large enough to accommodate everybody.'' Under our Nation's system for allocating spectrum, some are granted the ''exclusive use'' of a portion of this ''public domain,'' even though others would use it if they could. That is why ''it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish.''

21. Congress has directed the Commission to ensure that broadcasters granted the exclusive use of a particular frequency serve the public interest. Or, as the D.C. Circuit put it in this case, a broadcaster holds a ''government-granted monopoly,'' and the Commission is required by statute to ensure that the public receives a fair return from each broadcaster for its use of that public resource. Unlike the DBS operator in *Time Warner,* who was required both to pay millions of dollars for the spectrum it won at auction and to set aside at least four percent of its capacity for noncommercial educational programming, broadcasters have obtained their spectrum for free and are not subject to such a set-aside requirement. The Commission therefore requests the parties to address this difference in treatment.

22. Under the relevant constitutional standard, a key factor in deciding whether to retain the rules at issue here or impose any other requirement is the extent to which the requirement interferes with the editorial judgment of broadcasters. As the U.S. Supreme Court has repeatedly recognized, the Commission has long '' 'walk[ed] a tightrope' '' designed to permit broadcasters ''to exercise 'the widest journalistic freedom consistent with' '' the principle that it is ''the right of the viewers and listeners, not the right of the broadcasters which is paramount.'' In this case, as explained above, the D.C. Circuit assumed that the rules at issue burden broadcasters to some extent, recognized that the Joint Statement had criticized the evidence previously presented on that point by the Broadcasters, but noted that the Commission had ''offered no updated or more credible information.'' A temporary suspension of the rules at issue, coupled with a proceeding that considers the other issues raised in this *Order*, should help the Commission to respond to the court's concerns.

Administrative Matters

23. *Request to Update Record.* Parties submitting evidence on the effect of the suspension of the rules as discussed above should submit such evidence 60 days after the suspension ends, and replies should be submitted 75 days after the suspension ends. Information may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

24. Information filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, parties must transmit one electronic copy of the evidence to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, parties should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail information, parties should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form, <your e-mail address>.'' A sample form and directions will be sent in reply.

25. Parties who choose to file by paper should also submit information on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room 2–C221, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WORD 97 or compatible software. The diskette should be accompanied by a cover letter and

should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the docket number (MM Docket No. 83–484), type of pleading, date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW., Room CY–B402, Washington, D.C. 20554.

26. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding, subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the rules, 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

27. *Initial Paperwork Reduction Act Analysis.* The actions taken in this *Order and Request to Update Record* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), and found to request new or modified reporting or recordkeeping by the public. It will be submitted to the Office of Management and Budget for emergency review under Section 3507 of the PRA.

Ordering Clauses

28. Authority for issuance of this *Order and Request to Update Record* is contained in sections 4(i), 303 and 315 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 315.

29. Sections 73.1920 and 73.1930 of the Commission's rules, 47 CFR 73.1920, 73.1930 (broadcast personal attack and political editorial rules), and § 76.209(b), (c), and (d) of the Commission's rules, 47 CFR 76.209(b), (c), (d), (cable personal attack and political editorial rules) *are suspended* upon the adoption date of this *Order and Request to Update Record* through December 2, 2000. This action is taken pursuant to sections 4(i), 303 and 315 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 315.

List of Subjects

47 CFR Part 73

Radio broadcasting, television broadcasting.

47 CFR Part 76

Cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–26014 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Columbian Sharp-Tailed Grouse as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 12-month finding for a petition to list Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) throughout its known historic range in the 48 contiguous United States under the Endangered Species Act of 1973, as amended. We have reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following the 90-day petition finding, consulted with recognized prairie grouse experts, and coordinated with other Federal, State, and tribal resource agencies within the historic range of the subspecies. On the basis of the best scientific and commercial information available, we find that listing the Columbian sharp-tailed grouse as a threatened species throughout its historic range in the contiguous United States is not warranted at this time.

DATES: The finding announced in this document was made September 27, 2000. Comments and information may be submitted until further notice is given by a document published in the **Federal Register**.

ADDRESSES: Data, information, comments, and material concerning the petition finding may be submitted to the Field Supervisor, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington, 99206. The 12-month petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Warren at the above address or telephone (509) 893–8020.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that we make a finding within 12 months of the date of receipt of a petition containing substantial information on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from an immediate proposal by other pending proposals of higher priority. Upon making a 12-month finding, we must promptly publish such notice in the **Federal Register**.

On March 16, 1995, we received a petition from the Biodiversity Legal Foundation, Boulder, Colorado, dated March 14, 1995. The petitioner requested that the Columbian sharp-tailed grouse be listed as a threatened species throughout its known historic range in the 48 contiguous United States and that critical habitat be designated for the species as soon as its biological needs are sufficiently well known. The petition also recommended a review of the species' status in British Columbia, Canada.

We added the Columbian sharp-tailed grouse to our candidate species list on January 6, 1989, as a Category 2 species (54 FR 560). Category 2 species were those for which we possessed information indicating that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. On February 28, 1996, we discontinued the designation of Category 2 species as candidates for listing under the Act (61 FR 7596).

Due to a backlog of listing actions and funding constraints in our listing program, we have implemented our Listing Priority Guidance during the course of listing actions for the subject petition. The guidance, first adopted on

September 21, 1983 (48 FR 43098), was updated on May 16, 1996 (61 FR 24722), December 5, 1996 (61 FR 64475), May 8, 1998 (63 FR 25502), and, most recently, on October 22, 1999 (64 FR 57114). The guidance is a biologically based method of prioritizing listing actions to provide the greatest conservation benefit to imperiled species in the most expeditious manner. On October 26, 1999, we determined that the petition presented substantial information and that the petition action may be warranted. We published an announcement of our administrative finding (64 FR 57620). At that time, we initiated a status review of the Columbian sharp-tailed grouse in accordance with our Listing Priority Guidance.

Species Information

The Columbian sharp-tailed grouse is one of seven recognized subspecies of sharp-tailed grouse that have been described in North America (AOU 1957, Aldrich 1963, Johnsgard 1973, Miller and Graul 1980, Connelly *et al.* 1998). Compared to the other subspecies, Columbian sharp-tailed grouse are the smallest and have darker gray plumage, more pronounced spotting on the throat, and narrower markings on the underside. Historically, Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central and extreme southeastern British Columbia.

Columbian sharp-tailed grouse rely on a variety of good quality native habitats within the sagebrush-bunchgrass, meadow-steppe, mountain shrub, and riparian zones of the northwestern United States (Giesen and Connelly 1993). Various upland habitats, with a component of more dense riparian or mountain shrub habitat to provide escape cover, are important to the subspecies from spring to fall (Saab and Marks 1992, Giesen and Connelly 1993). Suitable wintering habitat, that consists largely of deciduous trees and shrubs, is also thought to be a key element to healthy Columbian sharp-tailed grouse populations (Marshall and Jensen 1937, Hart *et al.* 1950, Marks and Marks 1987, Giesen and Connelly 1993).

Male sharp-tailed grouse employ elaborate courtship displays in the spring to attract females to central dancing grounds, called leks. Established leks may be used for many years, although the exact dancing locations may shift position over time and smaller satellite leks often form in the vicinity of historic leks. Interacting clusters of leks in a local area, where males and females may switch sites within and between seasons, are defined as lek complexes (Schroeder *et al.,* pers. comm. 2000). Individual leks can consist of several to over 30 displaying males, under good conditions 15 to 25 males per lek are common (Meints, Idaho Dept. of Fish and Game, pers. comm. 1995 and 1998; Schroeder, Washington Dept. of Fish and Wildlife (WDFW), pers. comm. 1995, 1998, and 2000). Due to social structures within a lek and other potential influences, such as exposure to predation, leks seldom support more than 25 males (Moyles and Boag 1981, Rodgers 1992, Connelly *et al.* 1998). The few dominant males at a lek's center account for the majority of successful mating attempts (Leopold *et al.* 1981, Moyles and Boag 1981).

Spring-to-fall home range sizes of Columbian sharp-tailed grouse are relatively small, generally less than 2 square kilometers (km^2) (1.2 square miles (mi^2)), and the areas used are usually within a few km (mi) of a lek. Females typically nest and rear their broods within 1.6 km (1 mi) of an active lek, although nesting more than 3 km (1.9 mi) from a lek has been recorded (Saab and Marks 1992, Giesen and Connelly 1993). Seasonal movements to wintering areas from breeding grounds are typically less than 5 km (3.1 mi) (Giesen and Connelly 1993), although movements of up to 20 km (12.4 mi) have been recorded (Meints 1991). The annual survival rate of sharp-tailed grouse is relatively low, and ranges from roughly 20 to 50 percent (WDFW 1995, Connelly *et al.* 1998).

The area within 2.5 km (1.6 mi) of a lek is thought to be critical to the management of Columbian sharp-tailed grouse and this area should contain, or provide access to, suitable wintering habitats (Saab and Marks 1992, Giesen and Connelly 1993). Because of their influence on the species' demographics, leks (including the surrounding area) can be viewed as the principal units describing the arrangement of sharp-tailed grouse populations. Columbian sharp-tailed grouse assemblages range from local populations (single leks to lek complexes), to regional populations (potentially interacting local populations occupying small geographic areas, such as a county), to metapopulations (potentially interacting regional populations occupying larger geographic areas).

Various historic accounts indicate that Columbian sharp-tailed grouse were once much more abundant throughout their range where suitable habitats occurred (Hart *et al.* 1950, Buss and Dziedzic 1955, Gruell *circa* 1960, WDFW 1995). Excessive hunting in the mid to late 19th century is thought to have been a major contributing factor to the early extirpation of local populations and the initial reduction of the subspecies' range (Hart *et al.* 1950). However, since the turn of the century, the conversion of native habitats for crop production and their degradation as a result of heavy livestock grazing are thought to be the primary factors in further population declines and range reductions (Hart *et al.* 1950, Buss and Dziedzic 1955, Miller and Graul 1980, Marks and Marks 1987, Braun *et al.* 1994, WDFW 1995, McDonald and Reese 1998, Connelly *et al.* 1998). Columbian sharp-tailed grouse have been extirpated from California, Nevada, and Oregon (Miller and Graul 1980, Connelly *et al.* 1998). Past declines in the subspecies' overall abundance and extent of occupied range have isolated various populations of Columbian sharp-tailed grouse from one another since the mid-1900's (*cf* Hart *et al.* 1950).

When large geographic areas are considered (*e.g.,* states and provinces), the overall distribution of Columbian sharp-tailed grouse appears to have changed little since the mid-1900's, and various sources have acknowledged the difficulty of obtaining accurate population estimates for the subspecies (Hart *et al.* 1950, Rogers 1969, Miller and Graul 1980, Schroeder *et al.,* pers. comm. 2000). However, when smaller geographic areas are considered (*e.g.,* local populations, regional populations), a general pattern of continued range reduction and population decline is apparent from the mid-1900's to the present (Miller and Graul 1980; WDFW 1995; Ritcey 1995; Schroeder *et al.*, pers. comm. 2000; Mitchell, Utah Dept. of Natural Resources, pers. comm. 1995 and 1998; Hoffman, Colorado Dept. of Fish and Game, pers. comm. 1995 and 1998; Thier, Montana Dept. of Fish, Wildlife, and Parks, pers. comm. 1998; Chutter, B.C. Min. of Env., Wildlife Branch, pers. comm. 1995). Based on a questionnaire distributed to wildlife professionals in 1979 throughout the species' range, Miller and Graul (1980) state that populations of Columbian sharp-tailed grouse occupy less than 10 percent of their former range in Idaho, Montana, Utah, and Wyoming, 10 to 50 percent in Colorado and Washington, and 80 percent or more in British Columbia.

Most current population estimates have been derived from spring breeding population censuses collected by state and Federal agencies over the last two

decades. In general, estimates of fall population sizes are roughly double that of the spring breeding population. Most of the following discussions of distribution and abundance of Columbian sharp-tailed grouse by State and province are based on published and unpublished agency reports furnished after submission of the petition in March 1995, and during the public comment period for the status review, initiated in October 26, 1999. These reports are cited below, as appropriate. In addition, the following information is based on the best estimates of recognized experts (SRTIM 2000), and an independent report solicited by the Service that addresses the viability of the various extant Columbian sharp-tailed grouse populations (Bart 2000). This report was prepared using and summarizing data submitted by State and Bureau of Land Management offices and on maps of historic and current distributions of Columbian sharp-tailed grouse prepared by Schroeder (2000) using information obtained from State and Federal biologists working on this species.

Based on the best available information, the current minimum to maximum breeding population estimate for Columbian sharp-tailed grouse is approximately 51,000 to 52,000 (mean = 51,500) individuals within the U.S., and 56,000 to 61,500 (mean = 58,700) individuals within the total range. These populations occupy approximately 38,400 km^2 (23,800 mi^2) within the U.S. and 79,300 km^2 (49,200 mi^2) rangewide. Over 93 percent of all Columbian sharp-tailed grouse occur within the three metapopulations in northwest Colorado/south-central Wyoming (roughly 4,800 birds), southeastern Idaho/northern Utah (roughly 40,000 birds in Idaho and 5,100 in Utah), and central British Columbia (4,700 to 9,600). These three metapopulations are reported to be either stable or increasing (state reports summarized in Bart 2000). Rangewide, these three metapopulations including the stable population within British Columbia, stable and/or increasing populations occupy approximately 68,000 km^2 (42,200 mi^2) which is over 85 percent of the occupied range (79,300 km^2) (49,200 mi^2).

Colorado (Mumma, *in litt.* 1999; Bart 2000; House, *in litt.* 2000)—There are two subpopulations of Columbian sharp-tailed grouse in Colorado. The northwest region contains numerous interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 4,700 birds in the spring breeding population (9 percent of the current rangewide spring breeding population within the United States (U.S.)) and occupies about 8,700 km^2 (5,400 mi^2) (23 percent of the current range within the U.S.). This population occurs primarily in Moffat, Routt, and Rio Blanco Counties, and is continuous with local populations in south-central Wyoming (see below). Current trend data indicate the population is likely stable and increasing. Mesa County, in the west-central region, may still harbor a remnant local population. If this population still exists, it is isolated from other regional populations. The last confirmed sightings of birds in this area are from *circa* 1985. The spring breeding population is estimated to currently be comprised of up to 50 birds (less than 1 percent of the rangewide population within the U.S.) and inhabit about 1,600 km^2 (990 mi^2) (approximately 4 percent of the currently occupied U.S. range).

Idaho (Meints, pers. comm., 1995, 1998; Bart 2000; Mallet, *in litt.* 2000)—There are three subpopulations of Columbian sharp-tailed grouse occupying the state of Idaho. The southeastern region contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 40,000 birds in the spring breeding population (78 percent of the rangewide population within the U.S.). The population occupies approximately 14,800 km^2 (9,200 mi^2) (39 percent of the current range within the U.S.). This population is likely stable and increasing. It occurs primarily south of Rexburg and east of Rupert, Idaho, and is continuous with local populations in northern Utah (see below). The upper Snake River region, including the Sand Creek and Tex Creek areas, harbors roughly 600 birds in the spring breeding population (approximately 300 in each area). Birds from these two areas likely interact with one another and with the larger population in the southeastern region. This population is reported to be stable. Washington and Adams Counties, in the west-central region, harbor roughly 200 to 300 birds in the spring breeding population (less than 1 percent of the total U.S. population), which supports approximately 7 leks over about 1,690 km^2 (1,050 mi^2) (4 percent of the current range within the U.S.). The population is reported to be stable, although the area is isolated from other regional populations. Translocation efforts conducted in extreme south-central Idaho beginning in 1992 have resulted in an isolated local population (200 to 400 birds in the spring breeding population; less than 1 percent of U.S. total), supporting at least 3 leks over 175 km^2 (110mi^2) (less than 1 percent of the total range within the U.S.). This area is contiguous with a small population of reintroduced birds in northeastern Nevada (see below). Translocated birds originated from the population in southeastern Idaho.

Montana (Wood 1991; Wood 1992; Bart 2000; McCarthy, *in litt.* 2000)—Two small local populations occur in the northwestern region of this state, one in Lincoln County near the international boundary with British Columbia, the other to the southeast in Powell County. The Lincoln County area supports fewer than 30 birds in the spring breeding population on a single lek, while the Powell County area supports fewer than 50 birds in the spring breeding population on a few leks. From 1987 through 1991, and again in 1996 and 1997, the Lincoln County population was augmented with birds translocated primarily from central British Columbia (one effort included birds translocated from southeastern Idaho). The taxonomic status of the Powell County population is in question. Based on evaluation of a limited number of specimens, these birds may show a greater morphological affinity to the plains subspecies. These two local populations are isolated from one another and from other regional populations. During the early 1970s and again in 1980, limited efforts to reintroduce sharp-tailed grouse to the National Bison Range (roughly 50 km (30 mi) northwest of Missoula) were conducted with birds translocated from southeastern Idaho. It is unlikely that any of these birds or their offspring persisted in the area. Both of these populations are probably still declining, but comprise less than 1 percent of the total U.S. subpopulation.

Nevada (Morros 1999; Crawforth, *in litt.* 2000)—One introduced population currently exists in Nevada. During the spring of 1999, 54 birds were translocated to the Snake Range in Elko County. Translocated birds originated from the population in southeastern Idaho. The most recent census information indicates there are roughly 20 to 40 birds remaining from this initial effort. Additional translocation efforts are planned through 2003, with a goal of releasing approximately 50 birds per year from the same source population. This reintroduced local population is likely continuous with reintroduced birds in south-central Idaho (see above).

Oregon (Crawford and Snyder 1992, Bart 2000, Crawford and Coggins 2000)—One introduced population currently exists in Oregon. From 1991

through 1997, a total of 179 birds had been translocated into Wallowa County in northeastern Oregon from the population in southeastern Idaho. As the result of these reintroduction efforts, an isolated local population may have been established. Recent census information indicates there are roughly 15 to 30 individuals in the spring breeding population, supporting one or few leks, and the population is likely declining.

Utah (Bart 2000; Mitchell, *in litt.* 2000)—One subpopulation currently exists in northern Utah. It contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 5,100 birds in the spring breeding population (10 percent of the U.S. subpopulation). This population is continuous with the population in southeastern Idaho (see above) and is reported to be stable and increasing, currently occupying roughly 3,600 km^2 (2,200 mi^2) (9 percent of the range within the U.S.) .

Washington (Schroeder, *in litt.* 2000; Cawston, *in litt.* 2000; Schroeder *et al.,* pers. comm. 2000)—Eight local populations occur in north-central Washington; 3 likely have multiple leks, while 5 consist of single or few leks. The overall estimate for the State is approximately 900 individuals in the spring breeding population. Some minimal interaction may occur between a few local populations, while others are isolated. The region is isolated from other regional populations and comprises approximately 1,700 km^2 (1,100 mi^2) (4 percent of the range within the U.S.). During the spring of 1998, and again in 1999, translocation efforts were conducted to augment one of the remnant, local populations in north-central Washington. Translocated birds originated from the population in southeastern Idaho. The Nespelem population is reported to be stable, but the remainder of the populations are likely declining.

Wyoming (Oedekoven 1985; Kruse, *in litt.* 1999; Bart 2000)—The most recent census information for Wyoming indicates there is one population in the south-central region of the state, consisting of roughly 100 to 500 birds in the spring breeding population (less than 1 percent of the U.S. subpopulation) and supporting multiple leks over 2,500 km^2 (1,600 mi^2) (6 percent of the range within the U.S.). The population occurs in Carbon County and is continuous with the population in northwestern Colorado (see above). This population is reported to be stable.

British Columbia, Canada (Ritcey 1995; Chutter, pers. comm. 1995; Bart 2000)—The central region of British Columbia (Fraser Plateau) contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 4,700 to 9,600 birds in the spring breeding population (averaging 12 percent of the rangewide subpopulation) over an area of approximately 41,000 km^2 (25,000 mi^2) (51 percent of the current rangewide area). This metapopulation is reported to be stable. The available information indicates that the more northerly populations of Columbian sharp-tailed grouse in British Columbia may show a greater morphological and behavioral affinity to the northern subspecies (Tympanuchus phasianellus *caurus*). The area directly south of Cranbrook (southeastern region) may contain one local population with single to few leks. This population is isolated from other regional populations. The area south of Merritt to the Washington border (south-central region) contains individual birds or small flocks during the winter, with no breeding behavior (*i.e.,* leks) apparent.

Section 4(a) of the Act describes five threat factors that we must consider to determine whether any species is a threatened or endangered species for purposes of the Act. Any one or combination of the five threat factors may indicate the appropriateness of a warranted 12-month administrative finding. Section 4(b) of the Act requires that we also give consideration in our determination of a species' status to efforts being made by any state or foreign nation to protect such species. Below, the available information is considered with regard to the five threat factors established by the Act and any ongoing conservation measures for Columbian sharp-tailed grouse.

(1) Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Large portions of native habitats historically used by Columbian sharp-tailed grouse have been converted for crop production and impacted by other influences, including rural and suburban development, dam construction, minerals exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980; Wood 1991; Giesen and Connelly 1993; Schroeder, pers. comm. 1995 and 1998; Mitchell, pers. comm. 1995 and 1998; Chutter, pers. comm. 1995). In addition, past grazing practices over large portions of historic Columbian sharp-tailed grouse range have impacted native habitats (Hart *et al.* 1950, Miller and Graul 1980, Kessler and Bosch 1982, Wood 1992, Giesen and Connelly 1993). Intensive grazing pressure can be especially detrimental to nesting and wintering habitats potentially used by sharp-tailed grouse, primarily due to impacts on cover and food resources. However, much of the area currently occupied by Columbian sharp-tailed grouse is not subject to intensive grazing pressure (SRTIM 2000, see below).

Most of the area currently occupied by Columbian sharp-tailed grouse is privately owned (Bart 2000), and a large proportion of these lands are withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP) (USDA 1998). Except under extraordinary circumstances, CRP lands are not subject to grazing and likely have increased forb and insect abundance from spring to fall, which increases the value of these lands to Columbian sharp-tailed grouse females who make substantial use of CRP areas during nesting and brood-rearing (C. Warren, FWS, Spokane, *in litt.* 2000). CRP lands, and probably substantial amounts of adjacent ''native'' habitat (including important wintering habitat in some regions), are essentially free of pesticide and herbicide applications and grazing pressure (Warren, *in litt.* 2000). Accordingly, these CRP areas have become very important Columbian sharp-tailed grouse large metapopulations in Colorado, Idaho, Utah, and Wyoming (SRTIM 2000, Bart 2000).

A majority of CRP that are 10-year contracts for lands in States supporting Columbian sharp-tailed grouse were renewed after 1997, resulting in 92 to 99 percent of these lands being relatively secure until the years 2008 through 2010 (Warren, *in litt.* 2000). Between the fall of 1997 and the fall of 1998, the total amount of CRP land available to Columbian sharp-tailed grouse increased within all of the counties harboring the subspecies' metapopulations within the United States, including 25, 7, and 1 percent increases in Utah, Colorado, and Idaho, respectively. Lands under CRP contract as of the year 2000 show 1 to 7 percent acreage increases over those in 1998 (Warren, *in litt.* 2000).

The potential net changes that may occur under the CRP or if CRP contracts expire, vary considerably by county within the five States where CRP is shown to be important to Columbian sharp-tailed grouse. Presently, it is unclear what effects these changes may have on the subspecies' populations. If CRP lands that are important to the

smaller populations of Columbian sharp-tailed grouse revert back to crop production or are significantly altered, adverse impacts to these populations will occur and that will increase the risk of extirpation of these smaller populations (Bart 2000). However, the larger metapopulations are likely capable of adjusting to these potential impacts and would not be adversely effected. This is because smaller subpopulations within the region could supply a source for recolonization of modified sites, or alternate areas of suitable habitat would be developed under new CRP contracts to allow the affected local populations to adjust to the changes.

Reclaimed mining lands have also become important to the conservation of Columbian sharp-tailed grouse in northwestern Colorado (Mumma, *in litt.* 1999). These areas fall under the requirements of the Colorado Mined Land Reclamation Act (CMLRA). There is currently little information available regarding the ultimate fate of these areas upon termination of the reclamation bonds. However, it is not assured that they will be converted by development or subject to intensive grazing pressure following bond release. In addition, as with CRP contracts, it is likely that newly reclaimed areas will become available to Columbian sharp-tailed grouse in Colorado as current and future mining operations are completed.

(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Currently, Columbian sharp-tailed grouse are hunted in the fall in Colorado, Idaho, Utah, and British Columbia. Fall population sizes are roughly double that of the estimated spring breeding populations. Colorado maintains a fall hunting season in 1998 and 1999 in the northwest region, with bag and possession limits of two and four birds, respectively. Over the last four years, the annual state harvest estimate has averaged 218 birds, which is 2 percent of a fall population of approximately 9,500 birds. Idaho also maintains a fall hunting season in 1998 and 1999, with bag and possession limits of two and four birds, respectively. The latest available information indicates that a total of roughly 3,000 birds are harvested annually from the southeastern and upper Snake River regions, which is approximately 4 percent of the fall population of about 80,000 birds. Utah reopened its hunting season in 1998 and 1999. Over the past 2 years, Utah has issued 663 2-bird permits in a limited-entry hunt. The State harvest estimates for 1998 and 1999 were 201 birds (less than 2 percent) and 462 birds (less than 5 percent), respectively, of an approximate fall population of 10,200 birds. In British Columbia, it is estimated that up to 5,000 birds (35 percent of an average fall population of 14,300 birds) are harvested during some hunting seasons, however, this estimate is not based on rigorous surveys and is subject to wide year-to-year variation.

For relatively large, stable populations of upland birds under managed conditions, hunting is not likely to have an additive effect over natural mortality because the percentage of the population that is eliminated through hunting mortality is minimal and compensated through the normal population processes of reproduction and immigration (Braun *et al.* 1994, SRTIM 2000). Depending on the status of the hunted population and hunter access patterns, some local areas may act as population sinks and be adversely impacted by the additional mortality. However, the estimated harvest rates are not likely to adversely effect the metapopulations of Columbian sharp-tailed grouse in the States with hunting seasons (Bart 2000).

Several reintroduction efforts have taken place or are planned for Columbian sharp-tailed grouse. The relatively small, isolated populations would be adversely impacted by the removal of source birds for these projects, as may have occurred in British Columbia (Chutter, pers. comm. 1995). In addition, birds translocated from disparate parts of their range may not thrive or survive in the release area (Wood 1991; Thier, pers. comm. 1998). It is also unclear what effects the translocation of birds to disparate parts of their range may have on the genetic integrity of the augmented populations. Saab and Marks (1992) indicate that the conservation of all potential sources of genetic variation should be a critical concern given the fragmented, isolated nature of some of the subspecies' populations. Radio-marked birds may also be more susceptible to predation and other mortality factors (Marks and Marks 1987). The small and fragmented populations of Columbian sharp-tailed grouse would be at increased risk of extirpation from these potential threats. However, as with the potential impacts to the habitats used by the subspecies (above), the large metapopulations are not likely to be adversely affected by these management activities (Bart 2000).

(3) Disease or Predation

There are apparently no documented severe episodes of disease or predation that have played a significant role in the population declines and range reduction of Columbian sharp-tailed grouse. Episodes of disease or altered predation patterns may play an important role in the dynamics of the smaller, isolated populations and, as above, they are at increased risk of extirpation from these potential threats. However, these threats are currently of minor concern for the subspecies' metapopulations.

(4) Inadequacy of Existing Regulatory Mechanisms

In the majority of the subspecies' current range regulatory mechanisms and conservation measures are apparently adequate for maintaining viable populations of Columbian sharp-tailed grouse.

State hunting regulations appear to be sufficient to control the legal take of Columbian sharp-tailed grouse where they are hunted, and to avoid adverse impacts to these populations (above). In addition, the revegetation and reclamation standards under the CRP and CMLRA, respectively, promote the improvement of habitat conditions for the subspecies' metapopulations, and the CRP restricts livestock grazing on contract lands except under extraordinary circumstances.

(5) Other Natural or Human-Caused Factors Affecting the Species' Continued Existence

The fragmented, isolated nature of some local populations of Columbian sharp-tailed grouse may place them at increased risk of extirpation (Bart 2000). Random environmental and human-influenced events could cause significant mortality to, or disruption of, local populations of Columbian sharp-tailed grouse with single or few leks. Such events could include drought, fire, inclement weather, accidents, cultivation practices, recreational activities, altered predator dynamics, or disease epidemics (Hart *et al.* 1950; Rogers 1969; WDFW 1995; Mitchell, pers. comm. 1995 and 1998). If the affected population is also isolated, there is little chance of reestablishment to the area and further range reduction is likely to occur.

There is also concern regarding the lack of sufficient data with respect to the genetic integrity of the subspecies' various populations (Saab and Marks 1992). The deleterious effects of inbreeding and genetic drift may pose long-term threats to the smaller, isolated populations. The breeding dynamics of Columbian sharp-tailed grouse and their relatively short life spans and sedentary habits may exacerbate these potential influences. Conservation or reestablishment of such populations

may require intensive management efforts (Toepfer *et al.* 1990).

The factors discussed above are not considered to be threats to the subspecies because the large, stable metapopulations that occur in Colorado, Idaho, and Utah, representing roughly 97 percent of the subspecies within the U.S., would likely not be affected.

In summary, the available information indicates that the subspecies' metapopulations are relatively secure. These large metapopulations have persisted for the last several decades with no discernable downward trend, and recent information indicates that they may currently be increasing, as are the habitats available to them (SRTIM 2000). However, most of the small, isolated populations of Columbian sharp-tailed grouse will likely be extirpated within a few decades due to existing threats and current management scenarios (Bart 2000).

Conservation Measures

An inter-agency (Federal and State) team is currently preparing a conservation assessment for Columbian sharp-tailed grouse in Idaho (Ulliman *et al.* 1998). Upon its completion, the conservation strategy developed in Idaho may be used as a general model for conservation actions in other States and British Columbia.

The Colorado Division of Wildlife helped form and participates on the Northwest Colorado Columbian Sharp-tailed Grouse Work Group (Mumma, *in litt.* 1999). The work group includes interested parties representing resource industries, sportsmen's and conservation groups, and State and Federal resource agencies. The work group is currently developing a formal conservation plan, and is committed to improving conditions for the Columbian sharp-tailed grouse population in the northwest region of the State.

The Washington Department of Fish and Wildlife has prepared a management plan for Columbian sharp-tailed grouse occurring within the State (WDFW 1995), and has recently listed Columbian sharp-tailed grouse as a State threatened species (WDFW 1998a). Washington currently has a program to acquire lands for the protection and active management of Columbian sharp-tailed grouse (WDFW 1998b). Restoration and enhancement of native habitats to improve conditions for existing (and potential) populations are planned for these areas (Schroeder, pers. comm. 1995 and 1998).

Reintroduction efforts for Columbian sharp-tailed grouse have taken place in Washington, Montana, Oregon, Idaho, and Nevada (SRTIM 2000). Many early reintroduction efforts conducted for prairie grouse (including sharp-tailed grouse) failed to produce self-sustaining populations or to increase the size or distribution of augmented populations (Toepfer *et al.* 1990). Several recent efforts have shown greater potential to be effective as the techniques for reintroductions have improved (Toepfer *et al.* 1990; Crawforth, *in litt.* 2000; Schroeder, pers. comm. 1995 and 1998; Meints, pers. comm. 1995 and 1998). However, most of these improvements have been concerned with keeping translocated birds in the immediate vicinity of the release sites during the breeding season. While some reintroduced birds have established leks and reproduced in the release area over a number of years, none of these populations can yet be considered secure (Bart 2000). Continuing reintroduction efforts are planned for Idaho, Nevada, Washington, and Oregon; and various reintroduction efforts are being considered for California, Colorado, and Montana (SRTIM 2000).

Columbian sharp-tailed grouse populations in British Columbia may be expanding on the periphery of their current range where logging activity has created suitable open, grassland habitat. While this is not an active enhancement effort, the beneficial effects of these activities are believed to last up to approximately 15 years (Ritcey 1995; Chutter, pers. comm. 1995).

Conclusion

We have reviewed the petition, literature cited in the petition, other pertinent literature and information available in our files, and consulted with biologists and researchers familiar with Columbian sharp-tailed grouse. After reviewing the best scientific and commercial information available, and considering the information's significance with regard to the five listing factors established by the Act and ongoing conservation measures, we find that listing the Columbian sharp-tailed grouse as a threatened species throughout its known historic range in the 48 contiguous United States, as petitioned is not warranted.

In making this finding, we recognize that there have been declines in Columbian sharp-tailed grouse populations primarily attributed to the loss and degradation of important shrub steppe, grassland, and riparian habitats. These impacts are likely due to a combination of factors including crop production, over-grazing by livestock, altered fire frequencies, rural and suburban development, dam construction, herbicide spraying, recreation, and other factors. The Service's status review of the Columbian sharp-tailed grouse range wide has raised concern regarding the status of many of the small populations such that a further status review focusing on these populations will be initiated. However, the available information does not indicate that the large metapopulations of the subspecies are at increased risk of extirpation. We also recognize that various State and Federal agencies throughout the subspecies' historic distribution are actively managing the populations to try and improve their overall status and/or attempting to restore them to currently unoccupied habitats. If information becomes available indicating that listing as endangered or threatened is appropriate, we would propose to list the Columbia sharp-tailed grouse. Furthermore, we retain the option of recognizing a population segment for listing should information become available indicating that such an action is appropriate and warranted.

References Cited

A complete list of all references cited herein is available on request from the Upper Columbia River Basin Field Office, (See **ADDRESSES** section).

Author

The primary author of this notice is Chris Warren, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 27, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–25447 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 100400F]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery

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

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare Framework 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The intent of this action is to adjust the limited access scallop days-at-sea (DAS) allocations for the next 2 fishing years (March 1, 2001, through February 28, 2003); create a restricted access program for the scallop Mid-Atlantic closed areas (Hudson Canyon South and Virginia Beach), scheduled to reopen on March 1, 2001; and to close additional areas to scallop fishing to protect concentrations of juvenile scallops, reduce fishing mortality, and increase yield per recruit. The Council, in coordination with NMFS, also announces its intent to prepare an SEIS for the Atlantic Sea Scallop FMP in accordance with the National Environmental Policy Act to analyze the impacts of management alternatives.

DATES: Written comments on the intent to prepare the SEIS must be received on or before 5 p.m., local time, November 13, 2000.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465-0492. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the Atlantic Sea Scallop FMP, implemented by a final rule published January 19, 1994 (59 FR 2757), established a limited access program and a schedule of annual DAS allocations for full-time, part-time, and occasional vessels with limited access permits. The primary management tool implemented under Amendment 4 to control fishing mortality was the annual DAS allocation.

Amendment 7 to the FMP, implemented by a final rule published March 29, 1999 (64 FR 14835), changed the overfishing definition and extended the DAS-reduction schedule through 2008 to achieve a 10-year biomass rebuilding objective. To comply with the new overfishing definition and implement the rebuilding schedule, Amendment 7 revised the DAS schedule beginning March 1, 1999. To allow time for industry adjustment to the new regulations, the initial annual DAS allocations in 1999 were 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. According to Amendment 7, the DAS allocations in 2000 would be reduced to 51 days for full-time vessels, 20 days for part-time vessels, and 4 days for occasional vessels, and would remain below these levels until 2007, when the biomass rebuilding targets were expected to be met. The SEIS for Amendment 7 indicated that the 2000 DAS allocations would have negative impacts on the economic viability of the vessels and the scallop fleet. Amendment 7 also modified the framework adjustment process to allow the Council to consider closing and reopening areas, and closed two areas in the Mid-Atlantic to protect small scallops that were prevalent there, to promote stock rebuilding.

Shortly after the implementation of Amendment 7, the Council began deliberations on a longer-term process of developing Amendment 10, which would implement an area-based management system for scallops. In connection with the development of Amendment 10, the Council and NMFS published a Notice of Intent (NOI) to prepare an SEIS (65 FR 6975, February 11, 2000). The NOI announced that the Council is considering, among other things, closing areas with high concentrations of small scallops and opening them later when the scallops reach a certain size. The Council believes that shifting fishing effort in this manner could promote rebuilding, improve yield, and reduce the economic impacts of the low DAS allocations.

While Amendment 10 was being developed, the Council, through Framework 11 to the Scallop FMP (64 FR 31144, June 10, 1999) began a short-term strategy to access Closed Area II (CA II) in order to allow fishing on dense concentrations of scallops without compromising multispecies rebuilding or habitat protection. Framework 11 implemented a 1999 seasonal Georges Bank Sea Scallop Exemption Area (Exemption Area) in and adjacent to CA II and included the following primary measures for vessels fishing in the Exemption Area: A possession limit of up to 10,000 lb (4,536.0 kg) of scallop meats per trip; a maximum of three trips for full and part-time vessels and a maximum of one trip for occasional vessels; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a total allowable catch (TAC) of yellowtail flounder of 387 metric tons (mt); and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 500 lb (226.8 kg) per trip. In addition, Framework 11 implemented a minimum mesh twine-top of 8 inches (20.32 cm) for vessels fishing under a scallop DAS when fishing outside the Exemption Area.

This strategy occurred in the 1999 and 2000 fishing years. Based on an updated assessment from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and the 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, the Scallop Plan Development Team determined that increasing the Amendment 7 DAS allocations for each of three permit categories to the same amounts as in the 1999 fishing year would meet the 2000 fishing mortality rate (F) target. This was contingent upon scallops in multispecies CA I, CA II, and the Nantucket Lightship Closed Area (NLCA) remaining protected, or upon maintaining conservation neutrality, if scallopers were allowed access to these closed areas. Based on this information, Framework 12 to the FMP (65 FR 11478, March 3, 2000) adjusted the limited access scallop DAS allocations for the fishing year March 1, 2000, through February 28, 2001, to 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels.

Framework 13 to the FMP (65 FR 37903, June 19, 2000) continued the short-term strategy by implementing the 2000 Sea Scallop Exemption Program (Exemption Program), creating Exemption Areas in portions of CA I, CA II, and NLCA, and by including the following management measures: A possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; a maximum number of trips for each area; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a yellowtail flounder TAC of 725 mt for CA I and CA II combined, and 50 mt for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip, among other measures. In addition, this action modified the scallop dredge gear stowage requirements and corrected and clarified the ''end of the year DAS carry-over'' provision for vessels participating in the limited access scallop fishery. The primary intent of this action was to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas without compromising multispecies and sea scallop rebuilding or habitat protection.

The Council is once again considering development of management measures through Framework 14 to provide for

effective conservation and management of sea scallops while Amendment 10 is being developed. This action proposes to adjust the limited access scallop DAS allocations for the next 2 fishing years (March 1, 2001, through February 28, 2003). Under this measure annual DAS would remain at 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. This action also proposes a restricted access program for the Mid-Atlantic scallop closed areas (Hudson Canyon South and Virginia Beach), which are currently scheduled to reopen to scallop fishing on March 1, 2000, with no restrictions. Proposed measures and provisions of this action program include: (1) all scallop limited access and open access vessels (dredge, trawl, and General Category vessels) would be allowed access; (2) a scallop TAC for each of the reopened areas; (3) an allowance of five trips per vessel; (4) a possession limit of 15,000 lb (6,804 kg) of meats per trip (400 lb (181.4 kg) of meats for the General Category vessels); (5) an automatic deduction of 10 DAS for each trip; (6) a season of April 1 through February 28, with the provision that the Administrator, Northeast Region, NMFS, may allow additional trips for those vessels that made a trip prior to September 1, 2001; (7) an emergency landing provision, whereby vessels would only be charged one DAS for each 1,500 lb (680 kg) of meats landed, provided the vessel has experienced an emergency condition that forces the vessel to come into port earlier than anticipated; (8) a minimum mesh twine-top of 10 inches (25 cm) for scallop dredge vessels; (9) a vessel monitoring system requirement, with double-polling for the duration of the access program; (10) a TAC set-aside to allow cooperative research; and (11) a TAC set-aside to provide for observer coverage. The Council also may propose additional closed areas to protect concentrations of small scallops. Options for the closed areas include areas in both the Mid-Atlantic and Georges Bank.

Because the Mid-Atlantic closed areas are scheduled to reopen on March 1, 2001, the Council is considering in Framework 14 a restricted access program to prevent a rush of effort into the closed areas, which could potentially diminish the benefits achieved by the closures, and to balance fishing effort between the closed and open areas of the scallop fishery.

Because Framework 14 is the third in a series of short-term measures adopted by the Council during the development of Amendment 10, the Council, in cooperation with NMFS, has determined that it may be necessary to prepare an SEIS to examine the cumulative effects and consequences of the short-term measures on the human environment. In preparing the SEIS, the Council and NMFS will take into account, in addition to comments received in response to this document, all comments that have already been submitted and all discussions that have occurred in Council meetings before the publication of this document.

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

Dated: October 5, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–26060 Filed 10–5–00; 3:52 pm]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 65, No. 197

Wednesday, October 11, 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 COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance (the petitioner); from respondents Qingdao Rirong Foodstuff Co. Ltd. (Qingdao Rirong), Lianyungang Haiwang Aquatic Products Co., Ltd. (Lianyungang Haiwang), Yancheng Haiteng Aquatic Products & Foods, Co., Ltd. (Yancheng Haiteng), Huaiyin Foreign Trade Corporation No. 30 (Huaiyin30), Yancheng Baolong Biochemical Products Co., Ltd. (Baolong Biochemical), and from importers Ocean Harvest Wholesale Inc. (Ocean Harvest), Maritime Trading Company (Maritime Trading), and Boston Seafood Processors (Boston Seafood). The period of review is from September 1, 1998 through August 31, 1999.

The Department is also conducting new shipper reviews in response to requests from Fujian Pelagic Fishery Group Company (Fujian Pelagic), Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest), Suqian Foreign Trade Co., Ltd. (Suqian FTC), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), and Shantou SEZ Yangfeng Marine Products Company (Shantou SEZ). These reviews cover the period September 1, 1998 through August 31, 1999. See the Background section of this notice, below.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. (*See* the ''Preliminary Results of Review'' section of this notice.)

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Elfi Blum, Jacky Arrowsmith, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0648, (202) 482–0197, (202) 482–4052, or (202) 482–3020, respectively.

The Applicable Statute

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

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997 (62 FR 48218). On September 30, 1999, in accordance with 19 CFR 351.213(b)(1), the Department received requests for review from respondents Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin30, and Baolong Biochemical. The Department also received a request from Ocean Harvest, which requested a review of Yancheng Foreign Trade Corporation (Yancheng FTC), and from Maritime Trading and Boston Seafood Processors, which each requested a review of Huaiyin30. In addition, the Department received a request from petitioner to conduct an administrative review of Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin Foreign Trade Corporation (Huaiyin FTC), Huaiyin, Hua Yin, Huaiyin30, Baolong Biochemical, China Everbright Trading Company (China Everbright), Binzhou Prefecture Foodstuffs Import & Export Corp. (Binzhou Foodstuffs), Yancheng FTC, Jiangsu Cereals, Oils & Foodstuff Import & Export Corp. (Jiangsu Cereals), Yancheng Baolong Aquatic Foods Co., Ltd. (Baolong Aquatic), Huaiyin Ningtai Fisheries Co., Ltd. (Huaiyin Ningtai), Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu), Zhenfeng Foodstuff Company (Zhenfeng Foodstuff), Weishan Hongfa Lake Foodstuff Co., Ltd. (Weishan Hongfa), Ever Concord, Hua Yin Foreign Trading (Hua Yin FT), Huaiyin Foreign Trading (Huaiyin FT), Lianyungang Hailong Aquatic Product (Lianyungang Hailong), Qifaco, Seatrade International, Weishan Jinmuan Foodstuff (Weishan Jinmuan), Welly Shipping, aka Kenwa Shipping (Welly Shipping), Yancheng Foreign Trading, Jiangsu Baolong Group (Baolong Group), Asia-Europe, Jiangsu Yancheng Aquatic Products Freezing Plant (Yancheng Aquatic), and Yupeng Fishery. In addition, the petitioner requested an administrative review of Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian) and Huaiyin Foreign Trade Corporation (No. 5) (Huaiyin5).[1]

On October 28, 1999, the Department initiated an antidumping administrative review of the following companies: Ningbo Nanlian, Huaiyin5, Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin FTC, Huaiyin, Hua Yin, Huaiyin30, Baolong Biochemical, China Everbright, Binzhou Foodstuffs, Yancheng FTC, Jiangsu

[1] In the 1997/1998 administrative review, the Department determined that the export operations of Ningbo Nanlian and Huaiyin5 (Ningbo Nanlian/Huaiyin5) were intertwined such that the two companies appeared to be under common control and should receive a single antidumping duty rate. *See* proprietary versions of the Memorandum from Edward C. Yang to Joseph A. Spetrini: ''Relationship of Ningbo Nanlian Frozen Foods Company, Ltd. and Huaiyin Foreign Trade Corporation (5)'', dated April 7, 2000; ''Issues and Decision Memo for the Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China—March 26, 1997 through August 31, 1998,'' dated April 19, 2000. In light of this decision, the Department required Ningbo Nanlian and Huaiyin5 to submit consolidated questionnaire responses in the current administrative review.

Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Zhenfeng Foodstuff, Weishan Hongfa, Ever Concord, Hua Yin FT, Huaiyin FT, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, Yancheng Foreign Trading, Baolong Group, Asia-Europe, Yancheng Aquatic, and Yupeng Fishery. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 60161 (November 4, 1999). This administrative review covers the period September 1, 1998 through August 31, 1999.

On September 19, 1999, the Department received a request from Yixing Ban Chan Foods, and on September 30, 1999, the Department received requests from Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. These requests were made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 19 CFR 351.214(b)(ii) and (iii).

The requests received from Yixing Ban Chang, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ were accompanied by information and certifications establishing the effective date on which each company first shipped and entered freshwater crawfish tail meat for consumption in the United States, the volume of each shipment, and the date of first sale to an unaffiliated customer in the United States. Each of these five companies certified that it was not affiliated with any company which exported freshwater crawfish tail meat from the PRC during the POI. In addition, Yixing Ban Chang, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ each certified that its export activities are not controlled by the central government. On November 1, 1999, the Department initiated these new shipper reviews covering the period September 1, 1998 through August 31, 1999. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Review,* 64 FR 61833 (November 15, 1999). On February 25, 2000, Yixing Ban Chang withdrew its request for review, in accordance with 19 CFR 351.214 (f)(1). On August 4, 2000, the Department published the rescission of the new shipper review of Yixing Ban Chang. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Partial Rescission of New Shipper Antidumping Duty Review,* 65 FR 47958 (August 4, 2000).

On May 22, 2000 and May 24, 2000, Fujian Pelagic, Qingdao Zhengri, Shantou SEZ, Suqian FTC, and Yangzhou Lakebest, in accordance with 19 CFR 351.214(j)(3), agreed to waive the new shipper time limits applicable to their reviews so that the Department might conduct their new shipper reviews concurrently with the 1998/99 administrative review of crawfish tail meat from the PRC. On August 2, 2000, we aligned the deadlines for the new shipper reviews of Fujian Pelagic, Qingdao Zhengri, Shantou SEZ, Suqian FTC, and Yangzhou Lakebest with the deadlines of the 1998/99 administrative review. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Reviews,* 65 FR 48466 (August 8, 2000).

Due to extraordinarily complicated issues in this case, on May 11, 2000 the Department extended the deadline for completion of the preliminary results of the administrative review to September 29, 2000. *See Notice of Extension of Time Limits for Preliminary Results of Administrative Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China,* 65 FR 33297 (May 23, 2000).

Scope of Reviews

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

On February 1, 2000, petitioner withdrew its request for review for Everbright, Binzhou Foodstuffs, Jiangsu Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Ever Concord, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, and Yancheng Foreign Trading. The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for review of these companies within the 90-day period. Therefore, because there were no other requests for review of these companies, we are rescinding our review of China Everbright, Binzhou Foodstuffs, Jiangsu Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Ever Concord, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, and Yancheng Foreign Trading. We note that although petitioner withdrew its request for ''Yancheng Foreign Trading,'' it did not withdraw its request for review of ''Yancheng FTC.'' Both petitioner and Ocean Harvest requested a review of Yancheng FTC, and we are continuing that review.

On March 14, 2000, Qingdao Rirong informed the Department that it had no shipments of the subject merchandise to

the United States during the period of review (POR). On June 1, 2000, Zhenfeng Foodstuff informed the Department that it had no shipments of the subject merchandise to the United States during the period of review (POR). We also determined that Weishan Hongfa and Yancheng Aquatic made no exports of subject merchandise during the POR. We also received section D responses from Weishan Hongfa submitted by Baolong Biochemical for its review, and from Yancheng Aquatic, submitted by Yancheng Haiteng for its review. These responses stated, respectively, that Weishan Hongfa and Yancheng Aquatic did not export to the United States during the POR. We independently confirmed that Qingdao Rirong, Zhenfeng Foodstuff, Weishan Hongfa and Yancheng Aquatic had no shipments during the POR. The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are finally rescinding our review of Qingdao Rirong, Zhenfeng Foodstuff, Weishan Hongfa, and Yancheng Aquatic.

Based on information obtained at verification, we determine that Baolong Biochemical did not make any sales to the United States during the POR. (*See* Verification section below and memorandum from Joseph A. Spetrini to Troy H. Cribb ''Yancheng Baolong Biochemical Products (Baolong Biochemical): Intent to Rescind Administrative Review'' dated September 29, 2000 (Baolong Biochemical Rescission Memo).) The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding our review of Baolong Biochemical.

The petitioner requested a review for Huaiyin, Hua Yin, Hua Yin FT, and Huaiyin FT. The Department had no addresses or other identifying information regarding these four companies. We contacted petitioner and requested addresses, but petitioner was unable to furnish addresses for these names. These names appear to be variant or erroneous spellings of exporters whose names include the word ''Huaiyin.'' The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding our review of Huaiyin, Hua Yin, Hua Yin FT, and Huaiyin FT. We preliminarily determine that subject merchandise entering the United States under one of these names is covered by this review only to the extent that the exporter is in fact Huaiyin FTC, Huaiyin5, or Huaiyin30, which are separately covered by this review.

Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination under this title. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part,* 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 63 FR 37850 (July 14, 1998); *Silicon Metal From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 11654 (March 10, 1998).

Huaiyin FTC, Yupeng Fishery, Baolong Aquatic, and Asia Europe failed to respond to the Department's antidumping questionnaire. In addition, Lianyungang Haiwang failed to respond to the Department's supplemental questionnaire. As a result, we were unable to obtain the information necessary to conduct a review. Therefore, in accordance with section 776(a)(2)(A) of the Act, we are applying facts available to Huaiyin FTC, Yupeng Fishery, Lianyungang Haiwang, Baolong Aquatic, and Asia Europe. Since we have also determined that Baolong Group was the same company as Baolong Aquatic and Asia Europe during the POR (*see* Verification section below and the *Baolong Biochemical Rescission Memo*), we are applying adverse facts available to the Baolong Group.

It is the Department's policy that a respondent's eligibility for separate rates must be evaluated in each administrative review and must be based on respondent's claim for a separate rate in each administrative review, regardless of any separate rate the respondent received in the past. *See Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). However, for companies for which no questionnaire response is on the record, we are unable to evaluate whether a separate rate would be appropriate. In the instant administrative review, Huaiyin FTC, Asia-Europe, Baolong Aquatic (aka Baolong Group), Yupeng Fishery, and Lianyungang Haiwang failed to provide complete and accurate responses which could be used in the determination of separate rates. Therefore, consistent with Department practice, we are treating these companies, together with all other PRC companies that have not established that they are entitled to separate rates, as a single enterprise subject to government control. Furthermore, we have determined the rate to be applied to this single enterprise, a PRC-wide rate based on adverse facts available, in accordance with section 776(b) of the Act.

Section 776(b) of the Act provides that the Department may apply adverse facts available to a respondent when that respondent fails to cooperate to the best of its ability. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, we are using the rate for Huaiyin 30, 240.34 percent, the highest rate in this segment of the proceeding, which is also the highest rate in any segment of the proceeding.

Section 776(c) of the Act provides that when the Department relies on secondary information, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that the petition is secondary information. *See* SAA, H.R. Doc. 103–316 at 870 (1994). The SAA also clarifies that ''corroborate'' means to determine whether the information used has probative value. Id. In this instance, we are using an actual calculated rate from a company covered in this review. Thus, we consider this rate to have probative value. Accordingly, pursuant to section

776(b) of the Act, we are applying the rate of 240.34 percent to Huaiyin FTC, Baolong Aquatic, Asia-Europe, the Baolong Group, Yupeng Fishery, and Lianyungang Haiwang, as well as for the PRC entity. *See Determination of Adverse Facts Available in the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China (Adverse Facts Available Memorandum)*, dated September 29, 2000.

We were unable to verify a significant portion of Huaiyin30's questionnaire responses. Specifically, we found that (1) Huaiyin30 failed to report a factory which supplied it subject merchandise sold during the POR; and (2) we could not verify the significant parts of Huaiyin30's reported factors of production for another factory. Therefore, consistent with sections 776 (a) of the Act, we have determined to assign an antidumping margin based on partial facts available to Huaiyin30. *See* the proprietary memorandum, ''Determination of Partial Facts Available for Huaiyin Foreign Trade Corporation (30) in the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China,'' dated September 29, 2000.

Duty Absorption

On December 15, 1999, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR for freshwater crawfish tail meat from Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ in the new shipper reviews, and for Ningbo Nanlian/Huaiyin5, Huaiyin30, Lianyungang Haiwang, Nantong Delu, Yancheng Haiteng, Yancheng FTC, and Baolong Biochemical in the administrative review.[2] Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng sold to the United States through an affiliated importer. In addition, Yancheng FTC's reported sales included sales in which Yancheng FTC acted as the exporter of record for sales made by Nantong Delu to Ocean Harvest, its affiliated U.S. importer. Because the order underlying this review was issued in 1997, and this review was initiated in 1999, we are making a duty absorption determination in this segment of the proceeding.

Prior to these preliminary results, we requested that Ningbo Nanlian/Huaiyin5, and Yancheng Haiteng place on the record evidence that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period for the respective class or kind of merchandise, and that Yancheng FTC and Ocean Harvest place such evidence on the record with respect to Nantong Delu. Nantong Delu and Ocean Harvest stated that we can ascertain that Ocean Harvest passed the cost of the estimated duties on to its customers by comparing Ocean Harvest's price to its customers with the entered value of the subject merchandise. None of these companies provided any evidence, nor is there any evidence on the record, that the unaffiliated purchasers of subject merchandise sold by Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, or Nantong Delu will ultimately pay the antidumping duties to be assessed on entries during the review period. Accordingly, based on the record, we cannot conclude that the unaffiliated purchasers in the United States will pay the ultimately assessed duties. Therefore, we preliminarily find that for Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng, antidumping duties have been absorbed by the affiliated importer during the POR. In addition, we preliminarily find that antidumping duties have been absorbed by the Ocean Harvest for sales in which Yancheng FTC acted as the exporter for Nantong Delu during the POR. (*See* ''Memorandum to the File from Thomas Gilgunn; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Ningbo Nanlian Frozen Foods Co., Ltd./Huaiyin Foreign Trade Corp. (5),'' dated September 29, 2000, ''Memorandum to the File from Sarah Ellerman; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Haiteng Aquatic Products and Foods Co., Ltd.,'' dated September 29, 2000), and ''Memorandum to the File from Elfi Blum-Page; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Foreign Trade Corporation,'' dated September 29, 2000.)

Verification

As provided in section 782(i) of the Act, we conducted a verification of the responses of the following companies: Huaiyin30, Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Yancheng FTC, Baolong Biochemical, Fujian Pelagic, Suqian FTC, Yangzhou Lakebest, Shantou SEZ, and Qingdao Zhengri. These include all companies for which we are conducting a new shipper review. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports.

New Shippers

Based on the questionnaire responses received from Fujian Pelagic, Suqian FTC, Yangzhou Lakebest, Shantou SEZ, and Qingdao Zhengri, and our verification thereof, we preliminarily determine that these companies have met the requirements to qualify as new shippers during the POR. We have determined that they made their first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales made in normal commercial quantities, and that these companies were not affiliated with any exporter or producer that previously shipped to the United States.

Separate Rates

Ningbo Nanlian/Huaiyin5, Huaiyin30, Yancheng Haiteng, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ have requested separate, company-specific rates. In their questionnaire responses, the above companies state that they are independent legal entities. Ningbo Nanlian/Huaiyin5, Qingdao Zhengri, Yangzhou Lakebest, Shantou SEZ, and Yancheng Haiteng have furthermore reported they are PRC-foreign joint ventures.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585

[2] The Petitioner also requested duty absorption reviews for a number of companies for which we are rescinding the administrative review. As such, the petitioner's request for duty absorption reviews with regard to these companies is moot and we do not address them here.

(May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record indicates that Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ are not controlled by the government. All of the above companies submitted evidence of their legal right to set prices independent of all government oversight. The business licenses of every company indicates that each is permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting any of the reviewed companies from the exportation of crawfish. *See* ''Separate Rate Analysis in the d Administrative Review and New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China,'' dated September 29, 2000 (*Separate Rates Memorandum*), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

No export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities.* (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review,* 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over companies owned by ''all the people'' and that control over these enterprises has been transferred from the government to the enterprises themselves. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons* (*Legal Persons Law*), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC and placed on the record of these reviews, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that as an independent legal entity, a company is responsible for its own profits and losses. (*See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR 56046 (November 6, 1995) (*Manganese Metal*). *The People's Republic of China All People's Ownership Business Law* (*Company Law*), also on the record of these reviews, states that a foreign company shall bear civil responsibility for the operational activities of its branch organization in China. At verification, we saw that business licenses for Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin5, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ were established in accordance with these laws.

Yancheng Haiteng, Yangzhou Lakebest, Yancheng FTC, and Shantou SEZ provided copies of the *Foreign Trade Law,* which identifies the rights and responsibilities of business enterprises with foreign investment, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Therefore, with respect to the absence of *de jure* control over export activity, we determine that these firms are independent legal entities. Yancheng Haiteng placed on the record of this review *The Sino-Foreign Equity Joint Venture Law of the PRC,* which grants export rights to Sino-foreign equity joint venture companies without additional approval from a government entity. Qingdao Zhengri, Yancheng Haiteng, Ningbo Nanlian/Huaiyin5, Yangzhou Lakebest and Shantou SEZ also cited this law in their responses.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information presented indicates that the management of Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ are responsible for all decisions such as the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for any of these companies. In addition, we have found that these respondents' pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of respondent's revenues of profits, including export earnings. Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Each company has stated that its management is selected by its board of directors and or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondents concerning purchases of subject merchandise from other suppliers are not subject to government approval. For more information, *see Separate Rates Memorandum.* Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that these exporters are entitled to separate rates. For further discussion of the Department's preliminary determination that these exporters are entitled to separate rates, *see Separate Rate Memorandum.*

Normal Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng, in part, and for Yancheng FTC's sales made on behalf of Nantong Delu, we based United States price on CEP in accordance with section 772(b) of the Act, because the first sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices from the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (gross unit price), where applicable: foreign inland freight, international (ocean) freight, U.S. customs duty, brokerage and handling expenses, the affiliated purchaser's U.S. credit expenses, and the affiliated purchaser's indirect selling expenses. *See* sections 772(c) and (d) of the Act. Because U.S. customs duty, brokerage and handling expenses, credit expenses, and indirect selling expenses, are market-economy costs incurred in U.S. dollars, we used actual costs rather than surrogate values for these deductions to gross unit price.

For Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, Shantou SEZ, and, in part, for Ningbo Nalian/Huaiyin5 and Yancheng Haiteng, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

The Department has also preliminarily determined that Fujian Pelagic's sales to Pacific Coast Fishery Corporation (Pacific Coast) should be treated as EP sales. For more information, *see* the business proprietary version of the memorandum entitled ''New-Shipper Review of Freshwater Crawfish Tail meat from the People's Republic of China (PRC) (A–570–848): Sales Verification Report for Fujian Pelagic Fishery Group Company (Fujian Pelagic Group),'' dated September 29, 2000.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the first administrative review of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exception of the crawfish input, we valued the factors of production using publicly available information from India. For the crawfish input, we used Spanish import statistics for crawfish imported from Portugal. For further discussion, *see* Memorandum from The Crawfish Team, *Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum*, dated September 29, 2000 (*Factor Values Memo*). We used import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices.

We valued the factors of production as follows:

- To value whole crawfish, we used the average Spanish import price for fresh (not frozen) crawfish imported from Portugal. In order to factor out seasonal fluctuations in the price of the Spanish import data, we valued whole crawfish using monthly data from the POR.

We used the monthly Spanish import price data for whole crawfish imported from Portugal during the POR submitted by the petitioner on September 18, 2000. Petitioner stated that this information was ''updated data from the Spanish Ministry of Customs'' obtained through Global Trade Information Services, Inc. On September 19, 2000, Ningbo Nanlian/Huaiyin5 stated that the Department should not use the petitioner's data since that information was obtained from a fee-based internet service, and thus is not publicly available. In addition, Ningbo Nanlian/Huaiyin5 cited discrepancies between the petitioner's data and official Spanish import data which Ningbo Nanlian/Huaiyin5 submitted for one month. On September 20, 2000, the Department requested that Ningbo Nanlian/Huaiyin5 submit Spanish import data for all POR months to the record. (*See* Memorandum to the File, *Freshwater Crawfish Tail Meat from the PRC: Request for Monthly Spanish Import Data for Whole Crawfish,* dated September 21, 2000.) Ningbo Nanlian/Huaiyin5 did not submit the requested information. Thus, we are using the only monthly data on the value of the whole crawfish that is available to us, that petitioners submitted. Since the factors of production were reported for a period concurrent with our valuation of the crawfish input, we did not adjust these factor values for inflation. See the *Factor Values Memorandum* for further discussion.

To value the by-product of shells, we used a free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells. (*See Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Administrative Review, and Rescission of the New Shipper Review for Yancheng Baolung Biochemical Products, Co., Ltd.: Freshwater Crawfish Tail Meat from the People's Republic of China,* 64 FR 55236, October 12, 1999.) We adjusted this price to reflect deflation to the crawfish processing season.

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of ''Steam Coal for Industry'' and ''Electricity for Industry,'' published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000.* We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region,* published by the Asian Development Bank.

To achieve comparability of the energy and water prices to the factors reported for the crawfish processing

periods applicable for the companies under review, we adjusted these factor values using the Wholesale Price Index (WPI) for India, as published in the *International Financial Statistics (IFS)* published by the International Monetary Fund (IMF), to reflect inflation through the applicable periods.

• To value plastic bags, cardboard boxes and adhesive tape, we relied upon Indian import data from the April 1998 through August 1998 issues of *Monthly Statistics of the Foreign Trade of India (Monthly Statistics).* We adjusted these prices to reflect inflation to the crawfish processing season. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory, and we deflated to the period of production. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from India a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China,* 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

• To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we calculated simple average rates using publicly available financial statements of three Indian seafood processing companies submitted in the original investigation for which more current data is now available, and applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum.*

• For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000. *See http://ia.ita.doc.gov/wages/.* Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is found in the *1998 Year Book of Labour Statistics,* International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

• We valued movement expenses as follows:

To value truck freight expenses we used the seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China,* 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation through the POR using WPI for India in the IFS.

To value brokerage and handling in the home market, we used information reported in the antidumping administrative review of *Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184 (September 9, 1998) *(Stainless Steel Wire Rod from India),* and also used in the *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review,* 65 FR 20948 (April 19, 2000). We adjusted the rates to reflect inflation through the POR using WPI for India in the *IFS.*

We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing portion of the public questionnaire response submitted in the antidumping review of Viraj Group, Ltd. in *Stainless Steel Wire Rod from India.* Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation to the POR. For further discussion, see *Factor Values Memorandum.*

To value ocean freight, we obtained publicly available price quotes from Sea Land Services for shipping frozen crawfish tail meat from the PRC to Long Beach, California in the United States. *See Factor Values Memorandum.* To adjust this rate to the POR, we used the closest corresponding monthly WPI and the WPI average for the POR.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. (*See http://ia.ita.doc.gov/exchange/index.html.*)

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/ Exporter	Time period	Margin (percent)
Ningbo Nanlian/ Huaiyin5	9/1/98–8/31/99	62.69
Yancheng Haiteng	9/1/98–8/31/99	79.86
Huaiyin30	9/1/98–8/31/99	240.34
Yancheng FTC	9/1/98–8/31/99	166.93
Fujian Pelagic	9/1/98–8/31/99	174.50
Yangzhou Lakebest	9/1/98–8/31/99	24.55
Suqian FTC	9/1/98–8/31/99	19.97
Qingdao Zhengri	9/1/98–8/31/99	16.09
Shantou SEZ	9/1/98–8/31/99	18.96
PRC-Wide Rate	9/1/98–8/31/99	240.34

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department intends to issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to

the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firms will be the rates indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 240.34 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, these new shipper reviews, and this notice are published in accordance with section 751(a)(1) of the Act and sections 351.213, 351.214 and 351.221 of the Department's regulations.

Dated: September 29, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–26073 Filed 10–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 6, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The merchandise covered by this order is frozen concentrated orange juice from Brazil. This review covers the U.S. sales of three manufacturers/exporters, Citrovita Agro Industrial Ltda., Cambuhy MC Industrial Ltda., and Cambuhy Citrus Comercial e Exportadora. We have collapsed these entities for purposes of this proceeding and have calculated a single margin for them. The period of review is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0656 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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 (1999).

Background

This review covers three manufacturers/exporters, Citrovita Agro Industrial Ltda. (Citrovita), Cambuhy MC Industrial Ltda. (Cambuhy), and Cambuhy Citru Comercial e Exportadora (Cambuhy Exportadora). Because these companies met the requirements of 19 CFR 351.401(f), we have collapsed these entities for purposes of this proceeding and have calculated a single margin for them. For further discussion, see the ''Affiliated Producers'' section of this notice, below.

On June 6, 2000, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 65 FR 35892 (June 6, 2000).

We invited parties to comment on our preliminary results of review. At the request of Citrovita, we held a public hearing on August 9, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* of the United States (HTSUS). The HTSUS item number is provided for convenience and for U.S. Customs purposes. The Department's written description remains dispositive.

Period of Review

The period of review (POR) is May 1, 1998, through April 30, 1999.

Affiliated Producers

During the POR, a sister company to Citrovita's parent company purchased another Brazilian producer of FCOJ and that producer's affiliated trading company (*i.e.*, Cambuhy and Cambuhy Exportadora, respectively). We determine that it is appropriate to treat Citrovita and these affiliated parties as a single entity. In accordance with 19 CFR 351.401(f), we have collapsed Citrovita, Cambuhy, and Cambuhy Exportadora for purposes of the final results. However, because there is no

evidence that these companies were affiliated prior to September 1998, we have used only the sales and cost data reported for Cambuhy and Cambuhy Exportadora from September 1998 through the end of the POR for purposes of calculating normal value. For further discussion, see *Comment 1* in the ''Issues and Decision Memorandum'' (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 4, 2000.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Decision Memo which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. 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 Department building.

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

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following percentage weighted-average margin percentage exists for the period May 1, 1998, through April 30, 1999:

Manufacturer/exporter	Percent margin
Citrovita Agro Industrial Ltda/. Cambuhy MC Industrial Ltda/. Cambuhy Citrus Comercial e Exportadora	25.87

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by their total entered value for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed firm will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent. This rate is the ''All Others'' rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 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.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: October 4, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Collapsing of Affiliated Parties
2. Calculation of Financing Expenses
3. Treatment of Citrovita's Foreign Exchange Losses
4. Treatment of Cambuhy's Foreign Exchange Losses
5. Calculation of the Cost of Oranges Produced by an Affiliated Party
6. Calculation of Selling, General, and Administrative Expenses and Financing Expenses for the Collapsed Entity

[FR Doc. 00–26074 Filed 10–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083000A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from Phillips Alaska, Inc., (Phillips) for an authorization to take small numbers of marine mammals by harassment incidental to conducting exploration drilling activities, during the winter, offshore Prudhoe Bay, in the U.S. Beaufort Sea off Alaska. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Phillips to incidentally take, by harassment only, small numbers of ringed and bearded seals while conducting this activity.

DATES: Comments and information must be postmarked no later than November 13, 2000. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application and a list of references used in this document may be obtained by writing to

this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext. 128, or Brad Smith, Western Alaska Field Office, NMFS, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On August 1, 2000, NMFS received an application from Phillips requesting a 1-year authorization for the possible harassment of small numbers of marine mammals incidental to constructing an ice road and an ice island at the McCovey Prospect Area and drilling one or more oil exploration wells at that location during the winter, 2000/2001. The drilling location at McCovey is approximately 14 mi (22.5 kilometers (km)) north of East Dock at Prudhoe Bay, 7 mi (11.3 km) northwest of Cross Island, and 12 mi (19.3 km) east of the Northstar Unit.

The purpose of the operation is to evaluate the oil and gas potential of Phillips' operated leases in the McCovey area. The well will be drilled from an ice island constructed at the beginning of the winter drilling season. Some equipment may be staged on Reindeer Island prior to freeze-up; however, a majority of the equipment will be staged using the ice road.

Ice island construction is expected to begin when ice conditions are thick enough to allow heavy equipment to be transported to the location via ice road (approximately December, 2000). One well is planned to be drilled from a surface location in Outer Continental Shelf Lease Block Y-1577. Depending on the results found from this well, well tests may be performed and a sidetrack may be drilled as length of season permits. All drilling and well-testing operations will be performed only during the 2000-2001 winter drilling season and will be discontinued in May 2001 before ice break-up (which usually occurs in late June or July). Drilling and testing operations will not be conducted in broken ice or open water periods. The McCovey exploration well will be plugged and abandoned regardless of any commercial value demonstrated during well testing and reservoir evaluation. The exploration well is expected to be moved back down the ice road after operations are completed. This is expected to occur between about April 20 and May 2.

Prior to freeze-up in late October, 2000, materials will be barged to Reindeer Island for staging. This includes pumps, a support camp, rolligons and diesel fuel in storage tanks. The storage tanks will be in a containment capable of holding 110 percent of the capacity of the tanks. An ice pad will be constructed at Reindeer Island initially for the support camp and will be later used for the rigging camp. A 12-14 mi (19.3-22.5 km) ice road will be constructed from either West Dock or East Dock in Prudhoe Bay out to the McCovey location. The actual location and length of the ice road will depend on ice conditions prior to commencing operations. The ice road will then be used to transport the ice island construction equipment and the drilling rig out to the McCovey location.

The ice roads are expected to be completed and ready for heavy traffic by mid-February. Following construction, the road will be maintained using graders with snow wings and front-end loaders with snow blowers until ice-road travel is no longer possible, typically in mid-May.

The McCovey Ice Island will be located in 37 ft (11.2 m) of water. Pumps will be used to spray seawater into the cold air to form ice-crystals. The sprayed seawater is first used to thicken the ice at the island location to 2-3 m (6.6-9.8 ft). Then the water will be redirected to the center of the island to ground the island core. The ice island diameter is expected to be 850 ft (259.1 m) at the waterline and 600 ft (182.9 m) at the working surface above the water.

After completion of the ice road and island, a land-based drilling rig will be transported to the location. The support camp will be located on an ice pad constructed on Reindeer Island throughout the drilling operations. Reindeer Island is approximately 4.5 mi (7.2 km) from the ice island location. All drilling materials will be transported to the ice island by ice road and staged on the ice island. Muds and cuttings will be discharged to the sea ice in accordance with the General Offshore National Pollution Discharge Elimination System permit requirements.

A more detailed description of the work planned is contained in the application (Phillips, 2000) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps of Engineers, 1999; Minerals Management Service (MMS), 1990, 1992, 1996; NMFS, 1997).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (Balaena mysticetus), gray whales (Eschrichtius robustus), beluga (Delphinapterus leucas), ringed seals (Phoca hispida), spotted seals (Phoca largha) and bearded seals (Erignathus barbatus). Descriptions of the biology and distribution of these species, and others, can be found in several other documents (Small and DeMaster, 1995; Hill and DeMaster, 1998; Hill *et al.*, 1999; NMFS, 1997). Please refer to those documents for information on the biology, distribution and abundance of these species. However, because the proposed oil exploration activity will take place only during the winter, only ringed seals, and possibly a few bearded seals, have any potential to be impacted by the project. A description of the biology and abundance of these latter species are addressed in NMFS' Environmental Assessment (EA) on Winter Seismic Activities (NMFS, 1998). The documents mentioned here and in other parts of this document are considered part of this decision-making process.

In addition to the species mentioned in the preceding paragraph, polar bears (Urus maritimus) also have the potential to be taken incidental to the proposed activity. This species is under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). As a result, Phillips has applied for a Letter of Authorization from the USFWS for the taking of this species incidental to the McCovey drilling project.

Potential Impacts on Marine Mammals

Disturbance by noise is the principal means for potential takings by harassment by this activity. The marine mammal most likely to be impacted by construction of the ice road and ice island is the ringed seal. A slight possibility exists to impact bearded seals. While the applicant noted that there is a chance that a ringed seal could be killed during ice road construction (and ice island construction), NMFS believes that noise from road and island construction activity, the timing of the construction in December, and the monitoring described in the next section of this document, will make the injury or mortality of ringed seals very unlikely. However, the ice island location cannot be moved due to the engineering required for ice island design and construction. As a result, breathing holes or structures located within the footprint of the island will be covered by ice and the seals would need to relocate. However, constructing the island in December will mitigate the potential for damage to birthing lairs, since ringed seal ice structures are not well developed at this time of the year, pups are not born until mid-March in this area, and several structures would be available for each seal by that time for use as birthing and pupping lairs.

Site specific ringed seal survey work was conducted by Western Geophysical at the McCovey location during April, 2000 (Coltrane and Williams, 2000). A total of 22 seal structures were found in the core survey area and the surrounding 1 km (0.62 mi) monitoring zone. An additional 21 structures were found in the transit survey route. Seventeen of the structures were breathing holes, 20 were lairs, and 6 were unidentified; none of the identified lairs were birthing lairs. Coltrane and Williams (2000) reported that twenty-eight structures were revisited later. The remaining 15 structures were not rechecked as these structures were either of unknown status or frozen at the time of the initial search. Four breathing holes were found to be abandoned since the initial search (one was abandoned due to research, not industrial activity). The total abandonment rate of active seal structures after shallow hazards survey operations was 11 percent (3 of 28). In addition, the initial survey revealed that 19 percent (8 of 43) of the structures located had already been abandoned prior to any industrial searches. This natural abandonment rate was comparably higher than the abandonment rate after industrial activities in the area (19 percent compared to 11 percent).

Aerial surveys of seal density and abundance, conducted in 1997 in support of the Northstar project (which is approximately 9 miles (14.5 km) to the west from the proposed McCovey Prospect), indicated an average density over the area (including the McCovey Prospect area) of 0.43 ringed seals/km2. The overall observed density on landfast ice, over water depths of 5-20 m (16.4-65.6 ft), was 0.42 ringed seals/km2 (Miller et al., 1998). Surveys conducted in 1999 by Richardson and Williams (2000) indicated an overall observed density of 0.56 seals/km2. Excluding waters less than 3 m (9.8 ft) deep where ringed seals were rarely seen, the overall observed density was 0.63 seals/km2. The overall observed density in areas greater than 3 m (9.8 ft) deep was higher in 1999 than in either 1997 or 1998 (0.39 seals/km2).

Based on the methodology for assessing ringed seal takes by industrial activities at Northstar (see BP Exploration (Alaska), 1998), Phillips estimates that less than 31 ringed seals may be within an area where harassment takings might potentially occur. This estimate is based on the assumptions that any ringed seals within 0.4 mi (0.644 km) of the ice road and within 2.3 mi (3.7 km) of the ice island may be able to hear the noise associated with the McCovey Prospect. This estimate is based on the density recorded during the 1997 aerial survey of 0.42 seals/km2 (Miller et al. 1998). Phillips believes that this estimate of take is very conservative, since the noise associated with ice island construction should be less than the noise associated with construction of the gravel island at Northstar. The 2.3 mi (3.7 km) was based on noise measurements made by Greene (1983) for construction of Seal Island in 1982. Also, the estimated ''take'' is based on the entire ice road length of 12.5 miles (20.12 km) with no deduction for areas where the ice road may cross grounded ice (with no ringed seal presence). It should be recognized moreover, that NMFS does not consider a taking to have occurred simply because an animal hears a noise or has a minor startle reaction to the noise. In order for NMFS to consider a taking to have occurred, the reaction by the marine mammal needs to result in a behavioral response that may have biological significance on the part of the animal. A biologically significant behavioral response is a response that affects biologically important behavior, such as survival, breeding, feeding and migration, which have the potential to impact the reproductive success of the animal. For ringed seals, simply hearing industrial noise or hearing it and abandoning, either temporarily or permanently, one of its several breathing holes, is not considered significant. A biologically significant response, for example, would be displacement that affects mating, access to critical feeding areas, or weaned pups leaving one lair for another (which although also done naturally to avoid predation, can, in either case, affect survival).

Bearded seals are not expected to be in the area except in very small numbers and therefore should not be affected by the activity. Bearded seals are benthic feeders and the Beaufort Sea provides only limited habitat for them. In addition, their preference for open water further limits the potential for their being in this area at this time of the year.

Therefore, based on the above discussion, NMFS preliminarily concludes that the taking, by noise harassment incidental to construction of the ice road and ice island, will result in no more than a few dozen harassment takings by this activity.

Potential Effects on Subsistence Needs

NMFS has not identified any unmitigable adverse impacts by this activity on the availability of the species or stock(s) of marine mammals for subsistence needs.

Potential Effect on Habitat

The ice island will be a temporary structure on the winter ice. The temporary loss of this area is negligible when compared to the size of the nearshore Beaufort Sea. When drilling and well-testing operations are completed, the well will be plugged and abandoned in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment will leave the project area in essentially an unmodified condition, since there will be no wellhead or other structures remaining above the ocean floor.

In the unlikely event that there is an oil spill, Phillips has prepared an oil discharge prevention and contingency plan (ODPCP) specifically for this activity. The ODPCP is an extensive

document that addresses spill response, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. Oil spill response teams are located in Deadhorse, AK. Phillips and other operators have oil spill response equipment available in each current or soon-to-be oil-producing area on the North Slope.

Mitigation

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by Phillips as part of their proposed activity. These include:

(1) Conducting a winter drilling program using a land-based rig instead of using either the Concrete Island Drilling System platform, a floating platform, or a semisubmersible platform. The latter two platforms would require the need for icebreaker vessels; and

(2) Conducting drilling operations during winter months instead of during the open water season, and

(3) Constructing the ice road and ice island in December before seal structures are made into fully-developed lairs, and especially before constructing of the birth lair in March.

Marine Mammal Monitoring

Phillips proposes to utilize trained dogs or visual observations to assess the level of take of ringed seals during project activities. Prior to commencing ice road or ice island construction, trained dogs would be used to locate seal breathing holes and lairs along the proposed footprint of the ice road route and ice island pad. An adjacent 50-m (164 ft) buffer along the ice road route and a 1 km (0.62 mi) buffer around the ice island will also be surveyed. In the event that trained dogs are not available for the survey due to scheduling, Phillips proposes to employ a visual survey prior to onset of construction activities. The visual survey would involve searching the designated area for breathing holes, and examining pressure ridges, ice hummocks, and deep ice cracks for lairs. Attempts will be made to confirm the presence of lairs by using an aluminum rod to locate the breathing hole or lair access hole where practical. Success in visually locating lairs will be limited by the relatively low density of ringed seals combined with the difficulty of finding breathing holes or lairs on snow-covered ice during winter conditions. A professional marine mammal biologist and an Inupiat hunter would be conducting the visual survey.

Once drilling begins, a designated polar bear watch (typically an Inupiat hunter) will also look for and record seal activities. Because of the low expectation of interactions during the winter with marine mammals that are under the jurisdiction of NMFS, dedicated observers are not considered necessary on the ice island. As a result, NMFS proposes to require as part of the Authorization that Phillips instruct the polar bear watchperson to maintain a sightings-and-behavior log for seals that is separate from the Polar Bear Sightings Log. This latter reporting requirement is mandated by 50 CFR 18.27.

In order to obtain an indication of ringed seal response to Phillips' operations, a second seal structure survey will be conducted near the end of the McCovey project activities. The second survey will be conducted by biologists on snow machines using Differential Global Positioning System units to relocate and determine presence/absence of seals in lairs identified during the first survey. Any new holes would also be noted.

NMFS notes however, that current regulations for winter ice road construction for both Northstar (see 65 FR 34014, May 25, 2000) and on-ice vibroseis surveys (see 63 FR 5277, February 2, 1998), require ice roads to be surveyed a distance of 150 m (492 ft) from either side of the disturbed ice. Preliminarily, it is NMFS' intention to require similar monitoring for this project's ice road construction. In addition, NMFS proposes to require that all ice roads constructed in the Beaufort Sea be monitored by trained dogs until such time as NMFS has clear evidence that ice roads and other activities taking place during the winter are not having a cumulative impact on ringed seals or until peer-reviewed research has shown that human monitoring for ringed seal structures without dogs is as effective as using dogs. As such, trained dogs are required to be used for surveying for ringed seal structures, using that information to mitigate the impact to the greatest extent practicable, and to follow up those surveys at an appropriate time during or after the season to indicate the fate of those structures. NMFS proposes that a condition of the Incidental Harassment Authorization (IHA) be that if NMFS determines dogs are not available, then, and only then, would the human monitoring be authorized. Failure to use dogs when available would be considered a violation of the IHA and may result in suspension or termination of that IHA.

Reporting

NMFS proposes to require Phillips to submit one report under this proposed authorization. This report will be required 90 days after completion of activities authorized for marine mammal takings.

National Environmental Policy Act

The activity proposed by Phillips was the subject of a Final Environmental Impact Statement prepared by MMS in conjunction with Lease Sale 124 (MMS, 1990). In addition, in 1997 NMFS prepared and released an EA that addressed the impacts on the human environment from issuance of an authorization for taking marine mammals incidental to conducting oil exploration activities during winter and the alternatives to the proposed action. A Finding of No Significant Impact was signed on September 25, 1997.

Conclusions

NMFS has preliminarily determined that the short-term impact of exploration drilling and related activities in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from ice road and ice island construction, transporting the oil rig and supplies on the ice road, or due to drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Proposed Authorization

NMFS proposes to issue an IHA to Phillips for the possible harassment of small numbers of ringed seals and bearded seals incidental to constructing an ice road and ice island and drilling an oil exploration well at the McCovey Prospect during the winter 2000/01, provided the previously mentioned

mitigation, monitoring and reporting requirements are carried out. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of ringed and bearded seals, will have a negligible impact on these marine mammal stocks; and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: October 4, 2000.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–26087 Filed 10–10–00; 8:45 am]

BILLING CODE: 3510–22 –S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100400B]

Fisheries of the Exclusive Economic Zone Off Alaska; Catch-Monitoring Standards Workshop

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

ACTION: Notice of workshop.

SUMMARY: NMFS will present a workshop on proposed catch-monitoring standards for shoreside processors that take deliveries of pollock from the Bering Sea.

DATES: The workshop will be held on Thursday, November 16, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The workshop will be held at the Nordby Center, located in Fishermen's Terminal, 1711 West Nickerson Street, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS is developing a proposed rule to implement the American Fisheries Act (AFA). One aspect of this rulemaking is the development of catch monitoring standards for inshore processors that receive deliveries of pollock harvested in the directed fishery for pollock in Bering Sea. As currently envisioned by NMFS, these standards would require that the AFA shoreside processors develop and implement a Catch Monitoring and Control Plan (Plan). The Plan would address performance standards designed to ensure that all catch delivered to the processor is accurately weighed and accounted for.

NMFS is conducting the November 16, 2000, workshop for interested industry members to provide guidance on the development and implementation of these performance standards.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Alan Kinsolving at 907–586–7228 at least 7 working days prior to the workshop.

Dated: October 5, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–26083 Filed 10–10–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080300B]

Marine Mammals; File No. 555-1565

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. James T. Harvey (Principal Investigator, PI), Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing CA 95039 has been issued a permit to take Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070,(206/526-6150);

Regional Administrator, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, California 90802-4213,(562/980-4001).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On June 6, 2000, notice was published in the **Federal Register** (65 FR 35903) that a request for a scientific research permit to take Pacific harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant is authorized to capture, handle and tag 1,600 Pacific harbor seals per year of all age and sex classes near haul-out sites throughout California, Oregon and Washington. Captured seals will be subject to all or some of the following activities: blood and tissue sampling, flipper tagging, PIT tagging, branding, lavaging, and video camera attachment. Acoustic playback experiments and scat collection are also authorized around the haul-out sites. In addition, the applicant is authorized to surgically implant radio tags in 15 captive, rehabilitated Pacific harbor seals and to conduct feeding studies on 12 captive, rehabilitated Pacific harbor seals.

Dated: October 5, 2000.

Ann Terbush,

Permit and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–26084 Filed 10–10–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092700B]

Marine Mammals; File No. 990-1603

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that, Lizabeth Bowen, John Muir Institute of the Environment, University of California, Davis, CA 95616, has applied in due form for a permit to import blood samples for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 13, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to import from Mexico whole blood taken from California sea lions (*Zalophus californianus*) to test two hypotheses: First, Leptospira interrogans pomona is not present in areas inhabited by sea lions in the Sea of Cortez population; Second, L. interrogans is present in the area, yet sea lions in the Sea of Cortez populations are unable to produce an immune response to L. interrogans pomona..

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 4, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–26085 Filed 10–10–00; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 11, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 4, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Evaluation of Independent Programs.

Frequency: One time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 1,003.

Burden Hours: 639

Abstract: The Rehabilitation Services Administration (RSA), in the Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, has funded a comprehensive two-year evaluation of Parts B and C of the Centers for Independent Living (CIL) program. CIL programs promote a philosophy of independent living-consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy-the goal is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and enhance the integration and full inclusion of individuals with disabilities into the mainstream of American society. This evaluation will include questionnaire surveys of all CIL directors and a nationally representative sample of current and former consumers of CIL services. The study will examine two major areas: (1) consumer satisfaction and outcomes of services, and (2) systems advocacy and change. The results of the study will be used to complement Section 704 Annual Performance Report data; support RSA Government Performance and Results Act (GPRA) reporting requirements; assist CILs to identify successful service and advocacy strategies; and inform advocates and policy makers about the Independent Living Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–9915 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25994 Filed 10–10–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy, Science and Technology

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 101–6.1015(a), title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Research Advisory Committee has been renewed for a two-year period beginning October 2, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel at (202) 586–3279.

SUPPLEMENTARY INFORMATION: The Committee will continue to provide advice to the Director, Office of Nuclear Energy, Science and Technology, on long-term planning and priorities in the national nuclear energy research and development program. The Secretary of Energy has determined that renewal of the Committee is essential to the conduct of the Department's business and in the public interest in the connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Public Law Number 92–463), section 624 of the Department of Energy Act (Public Law Number 95–91), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Issued in Washington D.C. on October 2, 2000.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 00–25921 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of availability of solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of solicitation, University Reactor Instrumentation (URI) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for special research grant awards that will upgrade and improve U.S. nuclear research and training reactors. It is anticipated that on October 4, 2000, a full text for Solicitation Number DE–PS07–01ID14012 for the 2001 URI Program will be made available on the Internet at URL address: http://www.id.doe.gov/doeid/psd/proc-div.html. The deadline for receipt of applications will be on December 5, 2000.

ADDRESSES: Applications should be submitted to: U.S. Department of Energy, Idaho Operations Office, c/o Marie Warnick, P.O. Box 1625, Mail Stop 3860, Idaho Falls, Idaho 83415–3860.

FOR FURTHER INFORMATION CONTACT: Connie Osborne, Contract Specialist at osbornch@id.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation will be issued in accordance with 10 CFR Part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor because the purpose of the University Reactor Instrumentation (URI) program is to upgrade and improve the U.S. university nuclear research and training reactors and to contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Public Law 95–91.

Issued in Idaho Falls on October 4, 2000.

R. Jeffrey Hoyles,

Director, Procurement Services Division.

[FR Doc. 00–26026 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces the fourth in a series of meetings of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—Panel on Emerging Technological Alternatives to Incineration.

DATES: October 11, 2000, 7:30am–Noon MST.

ADDRESSES: La Quinta Inn & Suites, 6801 Tower Road, Denver, Colorado 80249. Phone—303–371–0888, Fax—303–371–0807.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Francesca McCann, Staff Director, Office of the Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technological alternatives to incineration for the treatment of mixed waste for the Department of Energy. The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils. The Panel will also evaluate whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

Tentative Agenda

The agenda for the October 11 meeting has not been finalized. However, the meeting will include panel discussion and a presentation on R&D Plans for Tru Mixed Waste and an overview of the responses to the published Request for Information. Members of the Public wishing to comment on issues before the Panel on Emerging Technological Alternatives to Incineration will have an opportunity to

address the Panel during the scheduled public comment period. The final agenda will be available at the meeting.

Tentative Agenda

7:30 am–7:40 am—Opening Remarks

7:40 am–9 am—Discussion of DOE R&D Plan

9 am–9:10 am—Break

9:10 am–10:40 am—RFI Responses

10:40 am–11:30 am—Review of Revised Report Outline

11:30 am–Noon—Public Comment

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Technological Alternatives to Incineration and submit written comments or comment during the scheduled public comment period. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to a last minute change in the location of the meeting in Denver.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, D.C., on October 6, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–26148 Filed 10–6–00; 11:50 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment; Regarding Bonneville Power Administration's Conservation and Renewables Discount Implementation Manual

AGENCY: Bonneville Power Administration, DOE.

ACTION: Notice of public review of Draft Conservation and Renewables Discount Implementation Manual and Regional Technical Forum Recommendations.

SUMMARY: The purpose of this notice is to announce a public review of the Draft Conservation and Renewables Discount (C&R Discount) Implementation Manual and the supporting Regional Technical Forum (RTF) recommendations/material. Bonneville Power Administration (BPA) is publishing a draft C&R Discount Implementation Manual, for public comment, as a result of the decision in BPA's 2002 Wholesale Power Rate Case (WP–02) to establish guidelines for the C&R Discount Program. After the public comment period, the C&R Discount Implementation Manual will be published in its final version and will be used to implement the C&R Discount Program.

Interested parties can find the Draft C&R Discount Implementation Manual at *http://www.bpa.gov/Energy/N/c&r.htm* and RTF work products can be found at the Northwest Power Planning Council's web site *http://www.nwppc.org/rtf.*

DATES: Comments must be submitted on or before November 27, 2000. The number, dates, and locations of the public review meetings have not been determined. These details will be posted on BPA's web page, *http://www.bpa.gov/Energy/N/c&r.htm*, as soon as they are available.

ADDRESSES: Comments regarding the Draft C&R Discount Implementation Manual can be sent to Mark Johnson—PNG/1, BPA, P.O. Box 3621, Portland, OR, 97208–3621 or e-mailed to him at *mejohnson@bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Johnson—PNG–1, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621, e-mail: *mejohnson@bpa.gov*, Phone: 503–230–7669.

SUPPLEMENTARY INFORMATION: As part of BPA's 2002 Power Rate Proposal, 0.5 mills per kWh was added to the basic rate for Subscription Power Purchases and settlement benefits. This 0.5 mills is referred to as the Conservation and Renewables Discount.

BPA is offering the C&R Discount to customers purchasing under the Priority Firm Power (PF–02), New Resource Firm Power (NR–02), and Residential Load (RL–02) rate schedules. Purchasers of the Slice product and benefits provided as a cash payment in settlement of the Residential Exchange Program will also be eligible for the C&R Discount.

Customers purchasing under the Industrial Firm Power rate (IP–02) will be eligible to the extent that the C&R Discount does not reduce their effective rate below the DSI floor rate. Regional public agency customers with Pre-Subscription contracts with collared pricing provisions may be eligible for the C&R Discount subject to contract provisions.

The amount of the C&R Discount will be a fixed monthly amount based on the customer's forecasted purchases and Residential Exchange Program settlement benefits from BPA under its Subscription contract.

Purchasers accepting the monthly C&R Discount agree to abide by the implementation provisions specified in the C&R Discount Implementation Manual. This notice announces a public review of the Draft C&R Discount Implementation Manual.

The Northwest Power Planning Council (Council) formed a Regional Technical Forum (RTF) to facilitate the development of conservation and renewable resources in the Pacific Northwest and assist BPA in implementing a conservation and renewables discount on BPA's new rates. The RTF was asked, by BPA, to make the following recommendations to BPA to facilitate the operation of the conservation and renewable resources discount program.

- A list of eligible conservation measures and programs, their estimated savings, and the estimated regional power system value associated with those savings.
- A process for updating the list as technology and standard practices change and an appeals process through which customers can demonstrate that different savings and value estimates should apply.
- A set of protocols by which the savings and system value of measures/programs not on the list could be estimated. These would include complex commercial or industrial projects.
- Recommended protocols for measurement and evaluation of savings.

With respect to renewables, the RTF was asked to:

• Develop a list of pre-approved Demonstration (RD&D) activities.

• Develop quality control criteria for direct application renewables and distributed resources that will be credited based on a ''deemed'' amount of output.

• Develop evaluation criteria to be used on a case-by-case basis to determine whether or not a proposed activity is RD&D.

• Develop criteria for determining what constitutes a ''new'' facility, as opposed to an expansion or addition to an existing facility.

• When requested by Bonneville, assist in evaluating proposals for which eligibility may be unclear.

The RTF recommendations and the Draft C&R Discount Implementation Manual will be the subject of the public review noticed hereunder. It is BPA's intent to give customers and interested parties the opportunity to comment before publishing final versions of the C&R Discount Manual and BPA's decisions on how to implement the RTF's recommendations.

Issued in Portland, Oregon on September 25, 2000.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 00–26025 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of Energy.

ACTION: Notice of submission for OMB reviw, comment request.

SUMMARY: The Department of Energy (DOE) has submitted the information collection identified in this notice to the Office of Management and Budget (OMB) for review under Sections 3507(a) and 3506(c) of the Paperwork Reduction Act of 1995.

This collection would gather information over a three-year period from participants in the Industrial Assessment Center (IAC) Program (specifically clients, alumni and web-site users), concerning details of energy, waste, production and cost savings generated through their participation in IAC assessments, or through their use of IAC-sponsored web-sites. Information will also be collected to determine the levels of satisfaction that participants have with the services of the IAC.

DATES: Written comments must be filed on or before October 23, 2000. 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 DOE 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 Oak Ridge National Laboratory at the address below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to M. Martin, Oak Ridge National Laboratory, Bethel Valley Rd., MS–6070, Bldg. 3147, Oak Ridge, TN 37831–6070. Ms. Martin may be contacted by telephone at (865) 574–8688, FAX at (865) 574–9338, or e-mail at martinma@ornl.gov.

SUPPLEMENTARY INFORMATION:

Collection Title: Program Quality Monitoring of IAC Participants: Clients, Alumni and Web-users

OMB Control Number: None.

Type of Request: New collection.

Frequency of response: One time only.

Respondents: IAC Program clients, alumni and web-users (businesses and individuals).

Estimated number of annual respondents: 570.

Estimated total annual burden hours: 355 hours.

Background

As part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), the Department of Energy sought comments from the general public and other Federal agencies regarding this collection of information through its June 9, 2000 notice in the **Federal Register** (65 FR 36679). No comments were received during this 60-day review period. The Department now seeks approval by the Office of Management and Budget (OMB) for clearance of its surveys designed for the IAC effort.

Data will be collected from IAC participants concerning energy, waste, productivity and cost savings generated through their participation in IAC assessments or through their use of technical information provided by IAC-sponsored web-sites. Data will be collected from clients, program alumni, and IAC web-users using either electronic, web-based surveys or telephone interviews. Participation is voluntary. The data will provide input for monitoring performance and satisfaction of IAC participants.

STATUTORY AUTHORITY: Section 3507(a) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 28, 2000.

Susan L. Frey,

Director, Division of Records Management.

[FR Doc. 00–26027 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Compliance Filing

October 4, 2000.

In the matter of: RM9–1–014, RP00–23–000, RP01–9–000, RP00–597–000, RP00–590–000, RP01–11–000, RP00–588–000, RP00–625–000, RP00–604–000, RP00–603–000, RP01–16–000, RP00–598–000, RP00–601–000, RP01–22–000, RP00–622–000, RP00–583–000, RP00–577–000, RP00–606–000, RP00–617–000, RP00–619–000, RP00–574–000, RP00–629–000, RP00–630–000, RP01–7–000, RP01–17–000, RP01–19–000, RP00–575–000, RP01–8–000, RP00–621–000, RP01–2–000, RP00–631–000, RP00–576–000, RP00–582–000, RP00–627–000, RP01–10–000, RP00–587–000, RP00–613–000, RP01–15–000, RP01–12–000, RP00–603–000, RP00–612–000, RP00–593–000, RP00–620–000, RP01–18–000, RP01–25–000, RP00–624–000, RP00–626–000, RP00–609–000, RP00–616–000, RP01–14–000, RP00–618–000, RP01–13–000, RP00–600–000 (Not Consolidated) Standards for Business Practices of Interstate Natural Gas Pipelines, Algonquin Gas Transmission Company, Alliance Pipeline L.P., ANR Pipeline Company, ANR Storage Company, Arkansas Western Pipeline, L.L.C., Blue Lake Gas Storage Company, Canyon Creek Compression Company, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Dauphin Island Gathering Partners, Discovery Gas Transmission L.L.C, Dominion Transmission, Inc., East Tennessee Natural Gas Company, El Paso Natural Gas Company, Florida Gas Transmission Company, Garden Banks Gas Pipeline, L.L.C., Great Lakes Gas Transmission Limited Partnership, Gulf States Transmission Corporation, High Island Offshore System, L.L.C., Honeoye Storage Corporation, Kinder Morgan Interstate Gas Transmission L.L.C., K N Wattenberg Transmission Limited Liability Company, Koch Gateway Pipeline Company, Maritimes & Northeast Pipeline, L.L.C., Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline L.L.C., Mississippi River Transmission Corporation, Mojave Pipeline Company, National Fuel Gas Supply

Corporation, Natural Gas Pipeline Company of America, Nautilus Pipeline Company, L.L.C., Northern Border Pipeline Company, Northern Natural Gas Company, Ozark Gas Transmission, L.L.C., Pauite Pipeline Company, Panhandle Eastern Pipe Line Company, PG&E Gas Transmission, Northwest Corporation, Reliant Energy Gas Transmission Company, Sabine Pipe Line, L.L.C., Sea Robin Pipeline Company, Steuben Gas Storage Company, Stingray Pipeline Company, L.L.C., Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Trailblazer Pipeline Company, Transwestern Pipeline Company, Trunkline Gas Company, Trunkline LNG Company, Tuscarora Gas Transmission Company, U–T Offshore System, L.L.C., Williams Gas Pipelines Central, Inc., Williston Basin Interstate Pipeline Company.

Take notice that the above-referenced pipelines made filings in compliance with order No. 587–L. The tariff sheets implement the imbalance netting and trading regulations adopted by the Commission in Order No. 587–G and are proposed to become effective November 1, 2000.

On June 30, 2000, in Docket No. RM96–1–014, the Commission issued its Order No. 587–L, *Standards for Business Practices of Interstate Natural Gas Pipelines,* 91 FERC ¶ 61,350 (2000). In that order the Commission required pipelines to file revise tariff sheets to comply with the regulation requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. The regulation was adopted in Order No. 587–G, Docket No. RM96–1–007, 83 FERC 61,029, to amend its Regulation under the Natural Gas Act.

Any person desiring to come a party must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection in the Public Reference Room. These filings may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26057 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3144–005 and Docket No. EC99–80–005 (not consolidated)]

American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and the Detroit Edison Company; FirstEnergy Corp. on Behalf of: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company; Notice of Filing

October 4, 2000.

Take notice that on September 22, 2000, Alliance Companies filed an errata to its compliance filing that was submitted on September 15, 2000 in Docket Nos. ER99–3144–004 and EC99–80–004.

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 October 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26048 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–391–005]

Colorado Interstate Gas Company; Notice of Revenue Report

October 4, 2000.

Take notice that on September 29, 2000, Colorado Interstate Gas Company (CIG), tendered for filing its report of revenues and credits during the first year of service under Rate Schedule SS–1, CIG's Swing Service.

CIG states that copies of the filing have been mailed to all parties on the Commission's official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26041 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–623–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 2000:

Forty-fifth Revised Sheet No. 25
Forty-fifth Revised Sheet No. 26
Forty-fifth Revised Sheet No. 27
Twentieth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, et al. Pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component from the currently effective Settlement Component effective November 1, 2000.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26049 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–010]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 29, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following Amendment Agreement to a recently filed negotiated rate transaction:

Amendment Agreements to ITS–2 Service Agreement No. 69314 between Columbia Gulf Transmission Company and Dynegy Marketing and Trade dated August 30, 2000, as Amended September 27, 2000.

Transportation service which was scheduled to commence September 5, 2000 and terminate September 30, 2000. The parties have executed an Amendment Agreement extending the term through October 31, 2000. All other terms and provisions remain unchanged and in full force and effect.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission Docket No. RP96–389–010 and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26065 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Dominion Transmission, Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2000:

Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
Second Revised Sheet No. 34
Second Revised Sheet No. 35

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment (TCRA), through the annual adjustment mechanism described in Section 15 of the General Terms and Conditions of DTI's Tariff (GT&C). DTI's surcharge incorporates the balance of its Unrecovered Fuel Cost Reimbursement Subaccount, as set forth in GT&C Section 16.5, as well as the balance in its Unrecovered EPC Reimbursement Subaccount, pursuant to GT&C Section 17.5.

DTI states that copies of its letter of transmittal and enclosures are being served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26051 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–3–000]

Dominion Transmission Inc.; Notice of Termination of Service

October 4, 2000.

Take notice that on October 2, 2000, Dominion Transmission, Inc. (DTI) tendered for filing a notice of termination of service of uncertificated gathering lines in North Mahoning Township, Indiana County, Pennsylvania. The proposed effective date of the termination is November 1, 2000.

DTI states that the lines for which termination of service is being requested are being sold to Dominion E & P. The date will also be the effective date of the abandonment by sale to Dominion E & P. DTI states that the lines being abandoned are listed in Exhibit A attached to the filing.

DTI states that copies of the filing have been sent to the affected producers, which are listed on Exhibit A. DTI also states that copies of the filing are being mailed to DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26053 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–011]

Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 29, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following tariff sheet for disclosure of a recently amended negotiated rate transaction.

First Revised Sheet No. 1400

DTI requests an effective date of October 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26064 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–455–001]

Honeoye Storage Corporation; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 28, 2000 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, Substitute First Revised Sheet No. 22, Substitute Original Sheet 22A, and Substitute Original Sheet 22B, to be effective September 15, 2000.

Honeoye states that the purpose of the filing is to comply with the Commission's September 14, 2000 letter order in Docket No. RP00–455–000 which accepted two proposed changes to Honeoye's Part 157 gas tariff and rejected without prejudice one proposed tariff change. On August 10, 2000 Honeoye filed revised tariff sheets which contained, among other things, a new provision that would have granted customers the right to make title transfers to other customers of gas which is held in the Honeoye gas field. The Commission's September 14 order found that the title transfer right provided more flexibility to Part 157 customers than is allowed under Commission policy. Consequently, Honeoye is deleting the title transfer right from the General Terms and Conditions of its Part 157 tariff. The revised tariff sheets reflect the other revisions to the General Terms and Conditions of Honeoye's Part 157 gas tariff that were accepted by the Commission.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26047 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–628–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

October 4, 2000.

Take notice that on September 29, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A and Fourth Revised Volume 1–B, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 2000.

KMGT states that the proposed changes update the KMIGT tariff and clarify or simplify certain tariff provisions. Through the proposed changes KMIGT: revises the provisions regarding capacity release by small customer service (SCS) shippers;

clarifies the provision concerning incidental purchases and sales of gas; and makes a number of housekeeping changes to various tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26050 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–032]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 28, 2000, Koch Gateway Pipeline Company (Koch) files with the Federal Energy Regulatory Commission a contract for disclosure of a recently negotiated rate transaction. As shown on the contract, Koch requests an effective date of October 1, 2000.

Special Negotiated Rate Between Koch and Koch Energy Trading Company

Koch states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26054 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–169–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 75, Original Sheet No. 75A and Original Sheet No. 75B, to be effective November 1, 2000.

Natural states that these tariff sheets were filed in compliance with the Commission's ''Order Following Technical Conference'' issued September 15, 2000 in Docket No. RP00–169–000, relating to capacity release of rights under Natural's Rate Schedule FRSS (Firm Reverse Storage Service).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective November 1, 2000.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–169.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26043 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–017]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on October 1, 2000:

Ninth Revised Sheet No. 66
Fourth Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26058 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–1–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

October 4, 2000.

Take notice that on October 2, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twentyeighth Revised Sheet No. 4, with an effective date of November 1, 2000.

PG&E GT–NW states that this tariff sheets is filed to modify the rate for service under Rate Schedule FTS–1(E–2)(WWP) in accordance with the negotiated rate formula for that service as specified in PG&E GTN's tariff.

PG&E GTN further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26052 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–327–003]

Texas Gas Transmission Corporation; Notice of Order No. 528 Reconciliation Report

October 4, 2000.

Take notice that on September 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a reconciliation report that compares Order No. 528 (TOP) costs with amounts recovered through the TOP recovery surcharge.

Texas Gas states that this reconciliation filing is being made in accordance with Section 29.3(c) as found in Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, and in compliance with Commission Order dated July 20, 2000. Texas Gas states that it has over-recovered its TOP costs by $35,367, which will be refunded on October 19, 2000.

Texas Gas states that copies of the reconciliation report are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and all parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26042 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal; Energy Regulatory Commission

[Docket No. RP00–426–001]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective:

Substitute Sixth Revised Sheet No. 235
Substitute Fourth Revised Sheet No. 236

In this compliance filing, Texas Gas hereby provides the clarifications and/or tariff modifications required by the August 31, 2000 Order of the Commission.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and those persons appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 285.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26046 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–003]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 27, 2000, Texas Gas Transmission

Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 13, with an effective date of June 1, 2000.

Texas Gas states that the filing is being made because Texas Gas's April 28, 2000, filing inadvertently omitted Thirteenth Revised Sheet No. 13 reflecting the revised rates for Rate Schedules FFS and ISS as presented on Schedule J–2, Parts 28 and 29, respectively, of the above referenced filing. Texas Gas respectfully requests that the tariff sheet be accepted for filing and be subject to the provisions of the Commission's May 31, 2000 ''Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Other Tariff Sheets, and Establishing a Hearing and Settlement Procedures,'' 91 FERC ¶ 61,215 (2000) which includes being suspended and permitted to become effective November 1, 2000, subject to refund, and subject to the conditions set forth in the body of the order.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and all parties appearing on the official restricted service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26044 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–014]

TransColorado Transmission Company; Notice of Tariff Filing

Take notice that on September 29, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2000:

Fourteenth Revised Sheet No. 21
Tenth Revised Sheet No. 22

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to reflect the new negotiated-rate firm transportation service contracts with Barrett Resources Corporation, Sempra Energy Trading, Enserco Energy, Inc., Dominion Exploration & Production, Texaco Natural Gas Inc. and Dynegy Marketing and Trade. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheet may become effective October 1, 2000.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26040 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–425–001]

Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective September 1, 2000.

First Revised Original Sheet No. 215
Substitute Original Sheet No. 299
Substitute Original Sheet No. 300

Williams states that this compliance filing is being made pursuant to Section 4 of the Natural Gas Act and in compliance with Ordering Paragraph B of the Commission's August 31, 2000 Order Accepting Tariff Sheets Subject to Conditions and Clarification in Docket No. RP00–425–000. Williams Gas Pipelines Central, Inc., 92 FERC ¶ 61,190 (2000).

In its August 31, 2000 Order, the Commission accepted, subject to conditions and clarification, tariff sheets filed by Williams on July 31, 2000 proposing to permit Williams to charge negotiated rates pursuant to the Commission's Alternative Rates Policy Statement and to implement generic discount conditions. In this compliance filing, Williams hereby provides the clarifications and/or tariff modifications required by the August 31, 2000 Order.

Williams states that copies of the revised tariff sheets are being mailed to Williams's jurisdictional customers, all parties appearing on the official service list, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26045 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–471–000]

Wyoming Interstate Company, Ltd.; Notice of Application

October 4, 2000.

Take notice that on September 26, 2000, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP00–471–000 an application pursuant to Section 7 of the Natural Gas Act (NGA), and the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing WIC to construct and operate a loop of its existing Medicine Bow Lateral and install a third compressor unit at its existing Douglas Compressor Station all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, WIC proposes to construct and operate the following facilities:

- An approximately 155 mile, 36-inch diameter pipeline loop of its entire existing Medicine Bow Lateral commencing in Converse County, Wyoming and extending in a southeasterly direction through Converse, Platt and Laramie Counties, Wyoming and terminating at the discharge side of WIC's existing Cheyenne Compressor Station in Weld County, Colorado.
- A 7,170 horsepower compressor unit at WIC's existing Douglas Compressor Station in Converse County, Wyoming.
- Additional facilities to increase the capacity of the meter stations at the northern end of the Medicine Bow Lateral and to increase capacity at the existing check meter station at the southern end in the Cheyenne Compressor Station yard.

WIC states that the proposed facilities will increase the capacity of the Medicine Bow Lateral from 380,000 dth per day to 1,055,000 dth per day. WIC avers that the project is fully supported by firm service agreements for which WIC has requested confidential treatment pursuant 18 CFR 388.112. WIC estimates that the proposed facilities will cost $159,575,900 and proposes to roll-in the costs of the expansion into its existing Medicine Bow Lateral rate. WIC also proposes to roll-in the incremental fuel into its existing Medicine Bow Incremental FL&U Percentage.

Any questions regarding this application should be directed to James R. West, Manager, Certificates, at (719) 520–4679, Wyoming Interstate Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944.

Any person desiring to be heard or to protest with reference to said application should on or before October 25, 2000, file with the Federal Energy Regulatory Commission (Commission), 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (NGA) (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of such comments to the Secretary of the Commission, Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the NGA and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WIC to appear or be represented at the hearing.

Linwood A. Watson, Jr.

Acting Secretary,

[FR Doc. 00–26055 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3784–000, et al.]

Valley Electric Association, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Valley Electric Association, Inc.

[Docket No. ER00–3784–000]

Take notice that on September 29, 2000, Valley Electric Association, Inc., tendered for filing an agreement extending the term of a transmission capacity contract with the United States Department of Energy.

A copy of the filing was served upon the Department of Energy.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Golden Spread Electric Cooperative, Inc.

[Docket No. ER00–3338–001]

The Montana Power Trading and Marketing Company

[Docket Nos. ER00–3367–001 and ER00–3368–001]

Take notice that on September 29, 2000, the Western Systems Power Pool (WSPP), tendered for filing a revised version of the WSPP Agreement (Agreement) in compliance with the Federal Energy Regulatory Commission's September 15, 2000 order in the proceedings captioned above. The WSPP states that the changes reflected in the revised Agreement are non-substantial, and only involve reformatting the Agreement as required by Order No. 614, Designation of Electric Rate Schedule Sheets, III FERC Stats. & Regs. ¶ 31,096 (2000).

The WSPP seeks an effective date of July 1, 2000 for this filing, the same date as assigned to the currently effective version of the Agreement.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. FirstEnergy Operating Companies

[Docket No. ER00–3771–000]

Take notice that on September 29, 2000, The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company (collectively, the FirstEnergy Operating Companies), tendered for filing the following items:

- FERC Electric Tariff, Original Volume No. 3 of the FirstEnergy Operating Companies (''Ancillary Services Tariff'').
- Service Agreement No. 3 under the Ancillary Services Tariff for the sale of ancillary services by the FirstEnergy Operating Companies to American Transmission Systems, Inc. (''ATSI''), a transmission-company affiliate of the FirstEnergy Operating Companies, from September 1, 2000 through August 31, 2003.

The FirstEnergy Operating Companies state that they have recently transferred their transmission facilities to ATSI, which does not own or control any generation resources. Because generation and transmission facilities historically owned by the FirstEnergy Operating Companies are now owned and operated by separate corporate entities, the FirstEnergy Operating Companies are offering to sell specified ancillary services under the Ancillary Services Tariff. The FirstEnergy Operating Companies state that the rates for most ancillary services available under the Ancillary Services Tariff are identical to rates that were previously incorporated in the open access transmission tariff of the FirstEnergy Operating Companies. In order to comply with FERC Order No. 888, ATSI initially will purchase ancillary services from the FirstEnergy Operating Companies in accordance with the rates, terms and conditions of the Ancillary Services Tariff.

The FirstEnergy Operating Companies are proposing to make the Ancillary Services Tariff and Service Agreement No. 1 thereunder effective as of September 1, 2000.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER00–3772–000]

Take notice that on September 29, 2000, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service to PacifiCorp Power Marketing, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp Power Marketing, Inc., and the Arizona Corporation Commission.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER00–3773–000]

Take notice that on September 29, 2000, Adirondack Fourth Branch, LLC, tendered for filing on behalf of Niagara Mohawk Power Corporation, an Interconnection Agreement between Niagara Mohawk and Adirondack Fourth Branch.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Adirondack Hydro Fourth Branch, LLC.

[Docket No. ER00–3774–000]

Take notice that on September 29, 2000, Adirondack Hydro Fourth Branch, LLC (Adirondack), tendered for filing an application for authorization to make wholesale sales of electric power at market-based rates, acceptance of a long-term power purchase agreement with Niagara Mohawk Power Company (Niagara Mohawk), and waiver of certain of the Commission's Regulations and blanket approval to engage in certain transactions.

Adirondack state that copies of this filing are being mailed to Niagara Mohawk and to the New York Public Service Commission.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. SOWEGA Power, LLC.

[Docket No. ER00–3775–000]

Take notice that on September 29, 2000, SOWEGA Power LLC tendered for filing amended and restated long-term service agreements with Grady Electric Membership Corporation and Three Notch Electric Membership Corporation pursuant to SOWEGA Power LLC's market-based tariff, FERC Electric Tariff, Original Vol. No. 1. These amended and restated long-term service agreements are designated as SOWEGA Power's First Revised Service Agreement No. 1 and First Revised Service Agreement No. 2, respectively.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Green Power Partners I, LLC.

[Docket No. ER00–3776–000]

Take notice that on September 29, 2000, Green Power Partners I LLC tendered for filing its Notice of Cancellation effective September 29, 2000, pursuant to Sections 35.15 and 131.53 of the Commission's Regulations, 18 CFR 35.15 and 131.53, with respect to Rate Schedule FERC Nos. 1 and 2, and supplements thereto. Green Power Partners I LLC is now a qualifying facility under Part 292 of the Commission's regulations, 18 CFR Part 292, and accordingly is canceling its rates schedule and supplements.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–3777–000]

Take notice that on September 29, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and PG&E Energy Services (PGE), dated September 28, 2000. This Service Agreement specifies that PGE has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and PGE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 28, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corporation

[Docket No. ER00–3778–000]

Take notice that on September 29, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Alliance Energy Services Partnership, British Columbia Power Exchange Corporation, and North Carolina Electric Marketing, LLC and Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with Commonwealth Edison Company, Michigan Companies (Consumers Energy and The Detroit Edison Company), and Virginia Power Company. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after September 1, 2000.

Pursuant to a request by Public Service Electric and Gas Company (PSE&G), the Non-firm Point-to-Point Transmission Service Agreement No. 71, under AEP Companies' FERC Electric Tariff Original Volume No. 4, is being assigned to PSEG Energy Resources & Trade LLC (PSEG ER&T). The AEP Companies' FERC Electric Tariff Original Volume No. 4 is superceded by the OATT.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Commonwealth Edison Company

[Docket No. ER00–3779–000]

Take notice that on September 29, 2000, Commonwealth Edison Company (ComEd), tendered for filing 12 Short-Term Firm Transmission Service Agreements with Allegheny Energy Supply Company, LLC (AESC), British Columbia Power Exchange Corporation (PowerEx), Cargill-Alliant, LLC (Alliant), Dynegy Power Marketing, Inc. (DYPM), El Paso Merchant Energy, L.P. (EPME), Illinois Municipal Electric Agency (IMEA), InPower Marketing Corp. (INPM), Koch Energy Trading, Inc. (Koch), PECO Energy Company (PECO), Split Rock Energy LLC (SRE), Tractebel Energy Marketing, Inc. (TEMI), and Wisconsin Public Service Corporation (WPS) under the terms of ComEd's Open Access Transmission Tariff (OATT). These Agreements have been amended to provide that Transmission Customers must confirm accepted requests for service within the reservation timing requirements established in the Commission's Order No. 638. These Agreements amend and supersede agreements already on file with the Commission.

ComEd requests an effective date of May 30, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER00–3780–000]

Take notice that on September 29, 2000, WPS Resources Operating Companies (WPS), tendered for filing unexecuted service agreements with Village of Stratford Water & Electric Utility (Stratford) and with Washington Island Electric Cooperative (Washington Island) for Network Integration Transmission Service under WPS's open access transmission tariff, FERC Electric Tariff, Volume No. 1 (Tariff). The purpose of this filing is to include distribution loss compensation service factors applicable to the billing of ancillary services under Schedules 3, 5 and 6 of the Tariff, and make other minor changes. WPS also files notices of cancellation for the prior service agreements for these customers.

Copies of the filing were served upon Stratford, Washington Island, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER00–3781–000]

Take notice that on September 29, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement with Holnam, Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Holnam, Inc.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER00–3782–000]

Take notice that on September 29, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing a modified and redesignated Interconnection and Operating Agreement with Union Power Partners, L.P. (UPP), and a redesignated Generator Imbalance Agreement with UPP. The modified Interconnection and Operating Agreement reflects the alterations necessary to conform the Interconnection and Operating Agreement to the First Amendment to that Agreement.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. AES Mohave, LLC.

[Docket No. ER00–3783–000]

Take notice that on September 28, 2000, AES Mohave, LLC (AES Mohave) petitioned the Commission for acceptance for filing of the Transitional Power Purchase Agreement between AES Mohave and Nevada Power Company and to accept the rates under the agreement as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a); for the granting of certain blanket approvals, including the authority to sell capacity, energy and certain Ancillary Services at market-based rates; and for the waiver of certain Commission regulations. AES Mohave is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Nevada.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER00–3785–000]

Take notice that on September 29, 2000, Virginia Electric and Power

Company (Dominion Virginia Power), tendered for filing an Amended Settlement Agreement between Virginia Electric and Power Company and North Carolina Eastern Municipal Power Agency, North Carolina Electric Membership Corporation, Southeastern Federal Power Customers, Inc., Southeastern Power Administration, Virginia Municipal Electric Association No. 1, Central Virginia Electric Cooperative, Inc., Craig-Botetourt Electric Cooperative, Inc., and Old Dominion Electric Cooperative. The Amended Settlement Agreement amends the Settlement Agreement accepted by the Commission on October 28, 1999 in Docket No. ER99–417–000.

Dominion Virginia Power requests an effective date of September 29, 2000, the date of filing of the Amended Settlement Agreement.

Copies of the filing were served upon the parties of record in Docket No. ER99–417–000, North Carolina Eastern Municipal Power Agency, North Carolina Electric Membership Corporation, Southeastern Federal Power Customers, Inc., Southeastern Power Administration, Virginia Municipal Electric Association No. 1, Central Virginia Electric Cooperative, Inc., Craig-Botetourt Electric Cooperative, Inc., Old Dominion Electric Cooperative, the Virginia State Corporation Commission, the Public Service Commission of West Virginia, and the North Carolina Utilities Commission.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Atlantic City Electric Company

[Docket No. ER00–3786–000]

Take notice that on September 29, 2000, Atlantic City Electric Company (Atlantic), tendered for filing an executed umbrella service agreement with PSEG Energy Resources & Trade LLC under Atlantic's market rate sales tariff, FERC Electric Tariff, Second Revised Volume No. 1.

Atlantic requests an effective date of September 1, 2000.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Delmarva Power & Light Company

[Docket No. ER00–3787–000]

Take notice that on September 29, 2000, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with PSEG Energy Resources & Trade LLC under Delmarva's market rate sales tariff, FERC Electric Tariff, Second Revised Volume No. 14.

Delmarva requests an effective date of September 1, 2000.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER00–3788–000]

Take notice that on September 29, 2000, Commonwealth Edison Company (ComEd), tendered for filing two Network Service Agreements (Service Agreements) and two Network Operating Agreements (Operating Agreements) between ComEd and the City of Batavia and the City of St. Charles. These agreements will govern ComEd's provision of network service load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 1, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. PSI Energy, Inc.

[Docket No. ER00–3789–000]

Take notice that on September 29, 2000, PSI Energy, Inc., tendered for filing its Power Coordination Agreement and Power Supply Agreement with Wabash Valley Power Association and its Service Agreement for Firm Point-to-Point Transmission Service with the City of Logansport, Indiana, redesignated according to Order No. 614. This filing is being made in conjunction with the filing of revised pages to these three agreements as part of a partial settlement in Docket No. ER00–188.

This filing has been served on the Wabash Valley Power Association and Logansport Municipal Utilities.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Metropolitan Edison Company

[Docket No. ER00–3790–000]

Take notice that on September 29, 2000, Metropolitan Edison Company (Metropolitan Edison), tendered for filing a Generation Facility Interconnection Agreement (Agreement) by and between Metropolitan Edison and Green Knight Economic Development Corporation (Green Knight), entered into on September 11, 2000.

Copies of the filing were served upon Green Knight and regulators in the State of Pennsylvania.

Comment date: October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Metropolitan Edison Company

[Docket No. ER00–3791–000]

Take notice that on September 29, 2000, Metropolitan Edison Company (Metropolitan Edison), tendered for filing a Generation Facility Interconnection Agreement (Agreement) by and between Metropolitan Edison and Lebanon Methane Recovery, Inc. (Lebanon Methane), entered into on July 17, 2000.

Copies of the filing were served upon Lebanon Methane and regulators in the State of Pennsylvania.

Comment date: October 20, 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–25989 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183–023, Oklahoma]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

October 4, 2000.

An environmental assessment (EA) is available for public revivew. The EA analyzes the environmental impacts of Grand River Dam Authority's (GRDA) application to grant a permit to Mike Sisemore (applicant) to install 2 boat docks with 38 slips in Lake Hudson, the reservoir for the Markham Ferry Hydroelectric Project. GRDA's proposed

permit would also allow the applicant to dredge about 25,000 cubic yards of sediment to improve boat access from the docks to Lake Hudson. The Markham Ferry Project is on the Grand (Nesho) River in Mayes County, Oklahoma.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. In the EA, Commission staff conclude that approving GRDA's application to grant the permit would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at *www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. Copies are also avaiable for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26061 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–447–000]

Distrigas of Massachusetts LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed High Pressure Expansion Project and Request for Comments on Environmental Issues

October 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the High Pressure Expansion Project involving construction and operation of facilities by Distrigas of Massachusetts LLC (DOMAC) at its existing liquefied natural gas (LNG) storage facility Everett, Massachusetts.[1] These facilities would consist of new vaporization equipment and associated systems to provide regasified LNG to a nonjurisdictional electric power generating plant currently under construction. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

The proposed project would allow DOMAC to supply 280,000 million British thermal units per day of regasified LNG to an electric power generating plant. Specifically, DOMAC requests Commission authorization to:

- Install four submerged combustion vaporization units capable of 600,000 thousand cubic feet per day;
- Replace the existing LNG tank pumps with higher capacity pumps;
- Install eight LNG booster pumps;
- Modify the LNG impoundment and vapor control systems; and
- Install various cross-connections, tie-ins, pollution control systems, and odorization equipment.

In addition to the above jurisdictional facilities, Sithe Mystic Development LLC is constructing the New Mystic Station, a 1,550 megawatt natural gas-fired, combined-cycle electric generating power plant at Everett, Massachusetts. The New Mystic Station, approved by the Massachusetts Energy Facilities Siting Board on September 30, 1999, is currently under construction and was 40 percent complete at the time of DOMAC's filing with the Commission. A 24-inch-diameter nonjurisdictional pipeline, approximately 1,200 feet in length, would also be constructed by Boston Gas Company to transport the regasified LNG to the New Mystic Station.

The general location of DOMAC's proposed project facilities is shown on the map attached as appendix 1.[2] Construction of the proposed facilities would occur completely on DOMAC's existing LNG plant site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''.[3] The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Vegetation and wildlife
- Public safety
- Cultural resources
- Water resources, fisheries, and wetlands
- Endangered and threatened species
- Land use
- Air quality and noise impacts

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your

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[1] DOMAC's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Group 1, PJ–11.1.

• Reference Docket No. CP00–447–000.

• Mail your comments so that they will be received in Washington, DC on or before November 3, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Lindood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26056 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent license.

b. *Project No.:* 2103–002.

c. *Date filed:* June 29, 2000.

d. *Applicant:* Cominco American Incorporated.

e. *Name of Project:* Cedar Creek.

f. *Location:* On Cedar Creek, a tributary of the Pend Oreille River, in Stevens County, Washington. The project occupies 2.058 acres of BLM land, 0.298 acres of International Boundary Reserve land controlled by the International Joint Commission, and 0.44 acres of private land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Bruce DiLuzio, Cominco American Incorporated, 15918 E. Euclid Avenue, Spokane, WA, 98216, (509)747–6111.

i. *FERC Contact:* Brandi Bradford, (202) 219–2789, brandi.bradford@ferc.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Cedar Creek Project consists of 2.4 acres of land periodically inundated by operation of the Waneta Project located in British Columbia, Canada. The Cedar Creek Project area is located in the United States. All Waneta Project facilities, including the dam and power generation facilities, are located in Canada and are outside FERC jurisdiction. Within the confines of the Cedar Creek Project, the maximum pool is EL 1517.8 (Canadian Geodetic Survey of Canada Datum) and minimum pool is EL 1502. Cominco American Incorporated currently has flowage rights to lands in the Cedar Creek Project boundary up to EL 1521.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–26059 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use Of Project Lands

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2197–042.

c. *Date Filed:* August 1, 2000.

d. *Applicant:* Alcoa Power Generating Inc. (formerly Yadkin Inc.).

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The Yadkin Hydroelectric Project is on the Yadkin/Pee Dee River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows, and Falls.

g. *Applicant Contact:* Mr. Gene Ellis, Alcoa Power Generating Inc., P.O. Box 576, Badin, NC 28009–0576; (704) 422–5606.

h. *FERC Contact:* Questions about this notice can be answered by Steve Hocking as (202) 219–2656 or e-mail address: *steve.hocking@ferc.fed.us.* Please note the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

i. *Deadline for filing comments, recommendations, motions to intervene and protests:* November 13, 2000.

All documents (original and eight copies) should be filed with: Davis P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Application:* Alcoa Power Generating, Inc. (Alcoa), licensee for the Yadkin Hydroelectric Project, filed a non-project use of project lands application. In its application, Alcoa proposes to grant a permit to KEJ Marketing Co., Inc., for the construction of four boat docks with a total of 48 boat slips and one boat launch ramp on Narrows Reservoir, part of the Yadkin Project. Alcoa proposes to grant a second permit to Heron Bay Homeowners Association for the use and operation of the above facilities. The above facilities would not be open to the public; they would be for Heron Bay residents only.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (P–2197–042) of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26062 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft Application for Nonpower License and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a, *Type of Application:* Nonpower License (Draft).

b. *Project No.:* 2852.

c. *Applicant:* New York State Electric & Gas Corporation.

d. *Name of Project:* Keuka.

e. *Location:* On Waneta and Lamoka Lakes, Keuka Lake, Mud Creek, in Steuben and Schulyer Counties, New York.

f. *Applicant Contact:* Carol Howland, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224.

g. *FERC Contact:* William Guey-Lee (202) 219–2808, Email: william.gueylee@ferc.fed.us.

h. New York State Electric & Gas Corporation (NYSEG) mailed a copy of the Draft Nonpower License Application and PDEA to interested parties on September 15, 2000. The Commission received a copy of the Draft Application and PDEA on September 21, 2000. Copies of the documents are available from NYSEG at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE., Washington, DC 20426. All comments must include the project name and number and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in

commenting on the draft license application and the PDEA, must do so on or before December 15, 2000.

j. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–26063 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6884–1]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; ''Announcement of Proposal Deadline for the Competition for the FY 2001 Brownfields Cleanup Revolving Loan Fund Pilots''

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal deadlines, revised guidelines.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the FY 2001 Brownfields Cleanup Revolving Loan Fund Pilots on October 11, 2000. The Brownfields Cleanup Revolving Loan Fund pilots (each may be funded up to $1,000,000) to test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private environmental cleanup and redevelopment efforts. EPA expects to select up to 35 additional Brownfields Cleanup Revolving Loan Fund pilots by March 2001. The deadline for new proposals for the FY 2000 Brownfields Cleanup Revolving Loan Fund pilots is *December 18, 2000*. Proposals must be postmarked by the U.S. Postal Service (USPS) by December 18, 2000, and sent to U.S. EPA Headquarters. In addition, duplicate copies of the proposal must also be submitted to the appropriate U.S. EPA Regional Office, ATTN: Brownfields Cleanup Revolving Loan Fund Coordinator.

The Brownfields Cleanup Revolving Loan Fund pilot proposals are selected on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised guidelines, entitled The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund (September 2000).

DATES: All proposals must be postmarked by USPS or sent to U.S. EPA Headquarters and a duplicate copy sent to the appropriate U.S. EPA Regional Office via registered or tracked mail no later than December 18, 2000.

ADDRESSES: BCRLF guidelines can be obtained by calling the Superfund Hotline at the following numbers:

Washington, DC Metro Area at 703–412–9810

Outside Washington, DC Metro at 1–800–424–9346

TDD for the Hearing Impaired at 1–800–553–7672

Copies of the Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund are available via the Internet: http://www.epa.gov/brownfields/

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Outreach and Special Projects Staff, Barbara Bassuener (202) 260–9347 or Jennifer Millett Wilbur (202) 260–6454.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative is designed to empower states, local governments, communities, and other stakeholders involved in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields in order to facilitate their sustainable reuse. As part of this Initiative, EPA has awarded cooperative agreements to States, political subdivisions (including cities, towns, counties), and Indian tribes to capitalize Brownfields Cleanup Revolving Loan Fund pilots. The purpose of these pilots is to test brownfields cleanup revolving loan fund models that direct special efforts toward facilitating coordinated public and private brownfields cleanup efforts.

In FY 2001, the EPA expects to select up to 35 new BCRLF pilots to be funded up to $1,000,000 per eligible entity by the end of March 2001.

Eligible entities for FY 2001 BCRLF pilots will be states, political subdivisions, or federally recognized Indian Tribes that have established and can demonstrate progress already made in the assessment, cleanup and revitalization of brownfields in their community, State or Tribe.

Coalitions of eligible entities are permitted to apply, but a single entity must be identified as the applicant. Additionally, a letter of support from each coalition member must be included as an attachment.

Applicants must demonstrate through their proposal: (1) an existing commitment to brownfields; (2) an ability to manage a revolving loan fund and environmental cleanups; (3) a need for cleanup funds; (4) commitment to making loans and to creative leveraging of EPA funds with public-private partnerships and in-kind services (matching funds are not required); and (5) a clear plan for sustaining the environmental protection and related economic development activities initiated through the BCRLF program. The eligible entities must meet EPA's threshold and evaluation criteria. There is no guarantee of an award. Also, the size of the awards may vary (for example, from $350,000 to $1,000,000 per eligible entity), depending on the proposal's responses to the evaluation criteria.

Funding for the Brownfields Cleanup Revolving Loan Fund pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1).

The 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 action 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). This rule will be effective on October 11, 2000.

Dated: October 3, 2000.

Linda Garczynski,

Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.

[FR Doc. 00–26066 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00301; FRL–6749–9]

Forum on State and Tribal Toxics Action (FOSTTA); Open Meetings; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Two components (Chemical Management, and Tribal Affairs) of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings October 23–24, 2000. This notice announces the location and times for the meetings and sets forth some tentative agenda topics. The National Conference of State Legislatures (NCSL) and the Environmental Protection Agency's (EPA) Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, NCSL facilitates ongoing efforts of the States and Tribes to identify, discuss, and address toxics-related issues, and to continue the dialogue on how Federal environmental programs can best be implemented.

DATES: The two components will meet concurrently October 23, 2000, from 8 a.m. to 5 p.m. and October 24, 2000, from 8 a.m. to noon. A plenary session is being planned for all the participants on Monday, October 24, 2000, from 8 a.m. to 9:30 a.m.

ADDRESSES: The meetings will be held at the Holiday Inn, Old Town, 480 King Street, Alexandria, VA, 22314. The hotel is about 12 blocks from the King Street Metro Station.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1761.

For technical information contact: George Hagevik, National Conference of State Legislatures, 1560 Broadway, Suite 700, Denver, CO 80202; telephone: (303) 839–0273 and FAX: (303) 863–8003; e-mail: george.hagevik@ncsl.org or Darlene Harrod, Environmental Assistance Division (7408), OPPT, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 260–6904 and fax: (202) 260–2219; e-mail: harrod.darlene@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, Tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the technical people listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the NCSL Web site at http://www.ncsl.org/programs/esnr/fostta/fostta.htm. To access this document on the EPA Internet Home Page go to http://www.epa.gov and select ''Laws and Regulations'' ''Regulations and Proposed Rules'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/FOSTTA.

2. *Facsimile*. Notify the contacts listed above if you would like any of the documents sent to you via fax.

III. Purpose of Meeting:

Tentative Agenda Items Identified by NCSL, the States, and the Tribes:

1. Subsistence food panel discussion
2. OPPTS Tribal strategy
3. Education and exposure models
4. Other topics as appropriate.

IV. How Can I Request To Participate in this Meeting?

You may submit a request to participate in this meeting in the mail or electronically to the names under the **FOR FURTHER INFORMATION** section. Do not submit any information in your request that is considered Confidential Business Information. Your request must be received by EPA on or before October 20, 2000.

List of Subjects

Environmental protection.

Dated: October 5, 2000.

Clarence O. Lewis, III,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–26119 Filed 10–10–00; 8:45 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34183B; FRL–6750–4]

Organophosphate Pesticide; Availability of Preliminary Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary dichlorvos (DDVP) risk assessments and related documents for dichlorvos (DDVP). This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the dichlorvos (DDVP) organophosphates pesticides that have risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these dichlorvos (DDVP) organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time

they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34183B for dichlorvos (DDVP), must be received on or before December 11, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34183B for dichlorvos (DDVP) in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kimberly Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for dichlorvos (DDVP), including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the dichlorvos (DDVP) organophosphate pesticides may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34183B. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34183B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by email to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34183B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been

developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary dichlorvos (DDVP) risk assessments for the following dichlorvos (DDVP) organophosphate pesticides are available in the individual organophosphate pesticide dockets.

Included in the individual organophosphate pesticide dockets are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the dichlorvos (DDVP) organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these dichlorvos (DDVP) organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by December 11, 2000 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for each individual organophosphate pesticide to which it pertains.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 3, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–26067 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–979; FRL–6749–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–979, must be received on or before November 13, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–979 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–979. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in

those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–979 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–979. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Avecia Biocides

PP 0F6172

EPA has received a pesticide petition (PP 0F6172) from Avecia Biocides, 1405 Foulk Road P.O. Box 15457 Wilmington, DE 19859 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 1,2 benzisothiazoline-3-one (BIT) when used as a preservative/stabilizer in pesticide formulations applied to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method*. Because Avecia Biocides is petitioning for an exemption from the requirement of a tolerance, an enforcement analytical method for BIT is not needed.

2. *Magnitude of residues*. Based on the proposed amount of BIT to be used in the final products (0.1% or less of the total formulation) and the recommended frequency and rates of application to the animals, the residues in treated animals are expected to be essentially undetectable and not toxicologically significant.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral toxicity of technical BIT is relatively low by oral and dermal exposure. The

acute oral median lethal dose (MLD) of the technical is 700–800 milligrams/kilograms (mg/kg) (toxicity category III) in rats and the acute dermal LD_{50} in rats is >2,000 mg/kg (toxicity category III). Technical BIT is slightly irritating to rabbit skin following a single 4 hour exposure and an abbreviated rabbit eye irritation study showed technical BIT to be a severe eye irritant. In skin sensitization studies using guinea pigs, technical BIT was shown to be a moderate skin sensitizer under the conditions of the test.

2. *Genotoxicty*. Generally, BIT is non-mutagenic in the Ames test with and without metabolic activation. In cases where the Ames test has produced positive responses the responses are either not reproducible or lack a dose response effect. In a L5178Y mouse lymphoma cell test, BIT produced a negative response both in the presence and absence of S9 activation, indicating it is non-mutagenic in mammalian cells. Negative responses were also seen *in vitro* in a DNA repair assay. In an *in vivo* mouse bone marrow micronucleus assay, BIT produced a negative response, indicating that it was not cytotoxic to bone marrow cells. BIT did not induce unscheduled DNA synthesis in rat hepatocytes. The conclusion from the results of these various assays is that BIT presents no significant genotoxic hazard, either *in vitro* or *in vivo*.

3. *Reproductive and developmental toxicity*. In a rat teratology study, doses up to 100 mg/kg/day of the technical BIT administered from days 7–16 of gestation did not cause any teratogenic effects. The highest dose level was maternally toxic and was marginally toxic to the fetuses. The no observed adverse effect level (NOAEL) for fetal toxicity was 40 mg/kg/day and 10 mg/kg/day for maternal toxicity.

4. *Subchronic toxicity*. NOAELs for BIT have been determined in 2 subchronic studies. In a 90 day feeding study conducted with rats in which the animals received 0, 200, 900, or 4,000 ppm of BIT technical paste in the diet, the only toxic effects observed occurred in the high dose animals and consisted of decreased body weights (bwts) (both sexes) and reduced food consumption (females). Hyperplasia of the fore stomach observed histopathologically in high dose animals was considered to be due to irritation by the test material. The toxicological NOAEL was 900 parts per million (ppm) (about 74 mg/kg/day).

In another subchronic study, male and female beagle dogs (4 animals sex/dose) were dosed orally for 90 days with 0, 5, 20, or 50 mg/kg/day of the BIT technical paste in corn oil. No toxicologically significant effects were seen in any dose group, resulting in a toxicological NOAEL of 50 mg/kg/day. The absolute NOAEL in the study was 5 mg/kg/day.

5. *Chronic toxicity*. Although no chronic studies have been conducted on BIT, the proposed use of BIT as an inert ingredient (preservative/stabilizer) in pesticide products applied to animals is not expected to create or result in chronic exposure to humans. The combined results from various mutagenicity studies indicate that BIT is not genotoxic. The effects noted in the subchronic studies in both rats and dogs did not indicate concern for potential chronic toxicity. Since BIT is not structurally similar to a known carcinogen, all current available evidence indicates that BIT would not be carcinogenic.

6. *Animal metabolism*. Rats administered radiolabelled BIT by gavage showed that most (86%) of the radioactivity was excreted within 24 hours. A total of 96% (91% in urine, 5% in feces) was excreted in 5 days. Analysis of abdominal fat after repeated dosing with BIT showed no accumulation of BIT or any of its metabolites. In another study comparing the metabolism of BIT in the rat and dog, the routes of metabolism in the 2 species were shown to be essentially similar. Breakdown of BIT by both species was rapid and was carried essentially to completion since no unchanged BIT was found in either rat or dog urine.

7. *Metabolite toxicology*. Metabolism studies in both the rat and dog showed that BIT was rapidly and completely metabolized by both species. The metabolites identified included o-(methylsulphinly)benzamide, and o-(methylsulphonyl)benzamide. The studies showed there were no significant accumulation of BIT or its metabolites in either species. There are, therefore, no significant concerns regarding the toxicity of BIT or its metabolites.

8. *Endocrine disruption*. BIT does not appear to disrupt (block, enhance, or mimic) normal endocrine function. BIT is not structurally similar to natural hormones, especially estrogens, androgens, and thyroid hormones.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Based on the toxicity data, an aggregate risk or likelihood of the occurrence of an adverse health effect resulting from all routes of exposure to BIT is not expected. There are not acute toxicological concerns associated with the proposed use of BIT as an inert ingredient in animal pesticide products. An acute dietary risk assessment, therefore, is not required.

Chronic exposure to BIT through food is essentially insignificant. This is illustrated by using cattle as an example because proposed dose rates as well as frequency of dosing will be higher in this species that other potential food source animals such as sheep or swine. The absolute maximum accumulated dose of BIT which could be received by an animal based on the highest number of applications permitted at the highest dose rates would not exceed 280 mg of BIT per year, based on a maximum of 20 applications per animal per year. This is assuming 100% of each dose of the pesticide is absorbed through the skin whether it is applied as a pour-on or a spray. For a 500 kg cow this amounts to 0.56 mg/kg BIT per year. Metabolism studies show that 96% of BIT is excreted within 5 days. If it were assumed that the remaining 4% of BIT is not excreted and accumulates in the animal, this would leave 0.022 mg/kg BIT per animal. Assuming a maximum dietary intake of 16 ounces of beef per day, an average 70 kg adult would ingest 0.01 mg of BIT, which is 0.0001 mg/kg per day. A 28 kg child consuming an average of 4 ounces of beef per day would ingest 0.002 mg of BIT per day, which is 0.00007 mg/kg/day. These calculations indicate that levels of BIT in the diet resulting from its proposed use in animal pesticide products are essentially insignificant in both adults and children, even when highly exaggerated levels of product absorption and food consumption are used in the calculations. It is assumed that infants will not be consuming any beef. Potential exposure to BIT through milk consumption, even to children during the years of highest consumption of cows' milk, is considered to be negligible.

ii. *Drinking water*. Contamination of drinking water would not be expected to occur under the proposed use conditions of BIT as an inert preservative/stabilizer in very low concentrations in pesticide products intended for topical applications only. The end use product would be applied principally to cattle and other domestic animals as either a direct pour-on application or as a spray. Neither method of application is expected to contaminate water supplies intended for human consumption.

2. *Non-dietary exposure*. The proposed use of BIT as a preservative/stabilizer in end-use animal pesticide formulations is not expected to result in any significant non-dietary exposure due to the low concentration of BIT employed in the formulation and the

extremely low probability of significant contact by the general public following animal treatment.

D. Cumulative Effects

The cumulative exposure assessment provides an estimate of the extent to which a defined population is exposed to two or more chemicals that share a common mechanism of toxicity by all relevant routes and from all relevant sources. Essentially all exposure from this proposed use of BIT will occur via the diet in the form of meat consumed from animals treated topically with products intended to control external parasites. As discussed above, the levels consumed should not exceed 0.0001 mg/kg/day for adults and 0.00007 mg/kg/day for children. No additional exposure of the general public is expected from either drinking water or non-dietary sources. Even using extremely conservative assumptions, the calculated exposure levels are so low as to be insignificant. The risk of cumulative effects and/or toxicity from BIT is negligible.

E. Safety Determination

1. *U.S. population*. No adverse effects of any kind would be expected from the extremely low dietary levels of BIT that may result from the proposed use of BIT in animal pesticide formulations.

2. *Infants and children*. Nothing in the available literature would suggest that infants and children are more sensitive to the effects of BIT than adults. Since the calculated dietary exposure of children to BIT is even less than adults, this proposed use of BIT should not pose a risk to this population subgroup. Exposure of infants to BIT resulting from its proposed use is expected to be negligible based on the fact that beef is not a normal dietary component for this population. In summary the proposed use of BIT as an inert ingredient in certain animal pesticides formulations will not put infants and children at risk.

F. International Tolerances

No Codex maximum residue levels have been established for BIT.

[FR Doc. 00–25751 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00609A; FRL–6741–2]

The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA announces the availability of the revised version of the pesticide science policy document entitled ''The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management.'' This notice is one in a series concerning science policy documents related to the implementation of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act.

FOR FURTHER INFORMATION CONTACT: Deborah Sisco, Environmental Protection Agency (7503C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–8121; fax number (703) 308–8090; e-mail address: sisco.deborah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry to this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

2. *Fax-on-demand*. You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6069 for the document entitled ''The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management.'' Select item 6070 for the document entitled ''EPA's Responses to Public Comments on the Draft Policy Document.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00609A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

II. Background Information

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel, a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, as directed by Vice President Albert Gore, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998 through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities. The CARAT held its first meeting on June 23, 2000.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of the revised science policy document concerning the role of use-related information in pesticide risk assessment and risk management.

III. Summary of Revised Science Policy Guidance Document

EPA is charged with regulating the sale and use of pesticides in the United States. In order to evaluate the risks of pesticide use and the benefits derived from pesticide use, and to evaluate the potential ramifications of regulatory decisions about the sale and use of pesticides, regulators must have information about how, where, when, why, and how much each pesticide is used in the United states

This document provides an overview of the role of use-related information in the regulatory process in terms that can be understood by the educated lay public. The document summarizes the types of use-related data used by EPA in pesticide risk assessment and risk management. It further describes where the data come from, how the Agency employs these data, and how EPA organizes and evaluates pesticide use data. However, this document is not intended to delve into the technical details of quantitative pesticide usage analysis, such as calculation of likely maxima, weighting methods, and prediction intervals.

The document goes on to describe the role of use-related data in human health risk assessments, including drinking water, and in ecological risk assessments, and, finally, the role of use-related information in risk management decisions. The final discussion of future steps for improving the quality and quantity of pesticide use data and strengthening the Agency's analytical approaches highlights the limitations of the available use-related data.

EPA published a draft version of this document in the **Federal Register** of July 14, 1999 (64 FR 37977) (FRL–6088–6) and comments were filed in docket control number OPP–00609. All comments were considered by the Agency in revising the document. Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft document. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. The Agency's response to the comments is available as described in Units I.B.1. and I.B.2.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 27, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–25933 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00679; FRL–6743–9]

Pesticides; Drinking Water Science Policies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is soliciting comments on two draft pesticide science policy documents concerning pesticide risk assessment in drinking water. These documents are entitled, respectively, ''Drinking Water Screening-Level Assessments'' and ''Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposures into Aggregate Risk Assessments.'' Together, these documents describe EPA's approach to conducting a screening-level risk assessment of pesticide residues in water. This notice is one in a series of science policy documents related to the implementation of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act.

DATES: Comments, identified by docket control number OPP–00679, must be received on or before December 11, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For ''Drinking Water Screening-Level Assessment,'' contact James Hetrick, Environmental Protection Agency (7507C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 305–5237; fax number: (703) 308–6181; e-mail address: hetrick.james@epa.gov. For ''Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposure into Aggregate Risk Assessments,'' contact Catherine Eiden, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 305–7887; fax number: (703) 308–5147; e-mail address: eiden.catherine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who produce or formulate pesticides, or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6083 for the document entitled ''Drinking Water Screening-Level Assessments'' and select item 6084 for the document entitled ''Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposures into Aggregate Risk Assessments.'' You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00679. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI.. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00679. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the documents.
7. Make sure to submit your comments by the deadline in this document.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background Information

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, as directed by Vice President Albert Gore, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998 through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities. The CARAT held its first meeting on June 23, 2000.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of two draft science policy documents concerning the methodology and standard operating procedures for conducting screening-level drinking water assessments.

III. Summary of Drinking Water Documents

A. Part A: ''Guidance for Use of the Index Reservoir in Drinking Water Exposure Assessments''

The purpose of this draft science policy document is to provide guidance on using the index reservoir scenario for use in estimating the exposure in drinking water derived from vulnerable surfacewater supplies. Since 1996, the Agency has been using a standard small ''farm pond'' as an interim scenario for estimating a potential upper bound on drinking water exposure until more appropriate tools could be developed. The index reservoir is being implemented in conjunction with the percent cropped area factor to replace the farm pond scenario. These two steps are intended to improve the quality and accuracy of OPP's modeling of high-end drinking water exposure for pesticides.

The index reservoir is intended as a replacement for the farm pond for use in drinking water exposure modeling. It is used in a similar manner to the farm pond except that flow rates have been calibrated for local weather conditions. Instructions for using the index reservoir are provided in this guidance document. The Exposure Analysis Modeling System (EXAMS) parameters for the standard index reservoir are provided in Appendix C of this guidance document.

B. Part B: ''Applying a Percent Crop Area Adjustment to Tier 2 Surface Water Model Estimates for Pesticide Drinking Water Exposure Assessments''

The current process for screening food-use pesticides for drinking water exposure concerns from runoff to surface water is to run the Generic Estimated Environmental Concentrations (GENEEC, the Tier 1 screening model) and compare the resulting concentration to the Drinking Water Level of Comparison (DWLOC). If the Tier 1 estimates exceed the DWLOC, then the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS, the Tier 2 screening model) is run. When running PRZM/EXAMS for drinking water assessments, the current policy is to select the crop use which is expected to result in the

highest runoff potential (based on application rate and method and on crop location). With issuance of this guidance document, OPP is changing its Tier 2 assessment process to incorporate the Percent Crop Area (PCA) concept.

The PCA is a generic watershed-based adjustment factor which will be applied to pesticide concentrations estimated for the surface water component of the drinking water exposure assessment using PRZM/EXAMS with the index reservoir scenario. The output generated by the PRZM/EXAMS model is multiplied by the maximum PCA (expressed as a decimal) generated for the crop or crops of interest. For purposes of conducting the Tier 2 drinking water assessment, the crop of interest would most typically be the labeled crop use that is anticipated to result in the greatest mass of pesticide entering the surface water body via runoff. Currently, OPP will apply PCA adjustments for four major crops—corn, soybeans, wheat, and cotton. For pesticides applied to corn, soybeans, wheat, and cotton, Tier 2 drinking water exposure assessments should utilize the appropriate index reservoir scenario and corresponding PCA(s).

This guidance results from a May 1999 presentation to the FIFRA SAP, ''Proposed Methods For Determining Watershed-derived Percent Crop Areas And Considerations For Applying Crop Area Adjustments to Surface Water Screening Models,'' and the response and recommendations from the panel. A more thorough discussion of this method and comparisons of monitoring and modeling results for selected pesticide/crop/site combinations is located at http://www.epa.gov/scipoly/SAP/1999/may/pca_sap.pdf. The SAP did not provide guidance in a few critical areas, such as defining ''major'' versus ''minor'' uses or what to do in most cases where a pesticide is used on multiple crops.

This draft science policy document provides guidance on when and how to apply the PCA to model estimates, describes the methods used to derive the PCA, and discusses some of the assumptions and limitations with the process.

IV. Summary of ''Standard Operating Procedure (SOP) for Incorporating Screening-level Estimates of Drinking Water Exposure into Aggregate Risk Assessments''

This draft science policy document is the SOP for a document entitled, ''Estimating the Drinking Water Component of a Dietary Exposure Assessment'' (notice of availability published in the **Federal Register** of November 10, 1999, 64 FR 61346; FRL–6389–7). It outlines the general approach to incorporating screening-level estimates of drinking water exposure into OPP's human health aggregate risk assessments. Specifically, it provides:

(1) A step-by-step process for OPP staff to follow while coordinating their work on registration and reregistration actions.

(2) Terms, definitions, descriptions, and calculations for use in incorporating estimates of pesticide concentrations in surface water and groundwater from screening-level models into aggregate risk assessments.

(3) Examples of specific language that may be used in health effects risk assessment documents to characterize screening-level exposure estimates for drinking water.

(4) An appendix containing example scenarios and calculations.

Under the procedures outlined in this draft science policy document, the resulting estimates of risk associated with a pesticide in drinking water are considered to be unrefined, high-end, upper-bound values. However, since many compounds can be ''cleared'' of drinking water concerns using these screening-level procedures, the process saves limited resources by providing an efficient means to determine whether a more refined assessment of drinking water exposure for a specific compound is warranted. This document is an updated version of the existing SOP for incorporating drinking water exposure into aggregate risk assessment and replaces the previous SOP dated August 1, 1999 (HED SOP 99.5, 1999).

V. Questions/Issues for the Drinking Water Screening-Level Assessment and SOP Documents

A. Index Reservoir (Part A)

1. Is the index reservoir a suitable replacement for the standard farm pond for screening-level drinking water assessments?

2. Do the process and criteria used to select the index reservoir represent a reasonable approach? Are there any other criteria the Agency should consider when we reassess the reservoir scenario in the future?

3. There are many refinements to the reservoir approach and its screening approach in general. Which of these refinements should have the highest priority?

4. It is assumed that there is no spray drift buffer zone around the perimeter of the reservoir. Are there any suggestions on how to develop a standard spray drift buffer zone for the index reservoir?

B. Percent Cropped Area (Part B)

1. The PRZM runoff model in the index reservoir may be limited to watersheds of no more than 20 square miles. Are there any suggestions in addressing the scale limitation of the PRZM model?

2. Is it reasonable to use a PCA adjustment to PRZM/EXAMS modeling for more accurate and appropriately conservative estimates of pesticide concentrations in surface water for screening evaluations of drinking water exposure?

3. Is the GIS procedure for calculating PCA appropriate for accounting for the portion of the watershed planted to the crops or crops of interest?

4. A default PCA has been calculated for cases where a defensible PCA cannot be calculated. Is it appropriate to use a default PCA?

C. The Standard Operating Procedure

Given the limited information available on pesticides in drinking water, is the approach outlined in the SOP guidance document a reasonable way to incorporate the available information on pesticide concentration in surface and ground water from screening-level models into aggregate human health risk assessment?

VI. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 27, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–25934 Filed 10–10–00 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

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 October 12, 2000, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: 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

1. Approval of Minutes

September 14, 2000 (Open and Closed).

2. Report

Corporate Approvals Report.

1. New Business—Other

Corporate and Chartering Approvals (Consent Action).

A. *ACA Formations*

1. Valley AgCredit, PCA/FLCA
2. FCS of Eastern Missouri, PCA/FLCA
3. Eastern Arkansas, PCA/FLCA

B. *ACA Restructuring*

1. Farm Credit of South Florida, ACA

C. *Conversions to ACAs*

1. Heritage Land Bank, FLCA
2. Panhandle Plains PCA
3. AgTexas FCS
4. AgriLand FCS

Dated: October 5, 2000.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–26105 Filed 10–5–00; 4:25 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 3, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 11, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0745.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 1520.

Estimated Time Per Response: .75 hrs (avg.).

Total Annual Burden: 1150.

Estimated Annual Reporting and Recordkeeping Cost Burden: $5,100,000.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Needs and Uses: In CC Docket No. 96–187, the Commission adopted measures to implement the specific streamlining tariff filing requirements for local exchange carriers. Incumbent LECs must use the Common Carrier Bureau's electronic tariff filing system to file tariffs and associated documents officially. EFTS is not limited to mandatory filing by incumbent LECs. Other parties may also file documents in tariff proceedings by means of ETFS.

OMB Control No.: 3060–0782.

Title: Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELS) at Various Locations.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 20.

Estimated Time Per Response: 40 hrs (avg.).

Total Annual Burden: 800.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: The Commission has provided voluntary guidelines for filing expanded local calling service requests. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request.

OMB Control No.: 3060–0786.

Title: Petitions for LATA Association changes by Independent Telephone Companies.

Form No.: N/A.

Type of Review: Extension.

Respondents: Business or Other for Profit.

Number of Respondents: 20.

Estimated Time Per Response: 6 hrs (avg.).

Total Annual Burden: 120 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Needs and Uses: The Commission has provided voluntary guidelines for filing LATA association change requests. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests.

The collection of information will enable the Commission to determine if there is a public need for changes in LATA associated in each area subject to the request.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25984 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 00–185; FCC 00–355]

Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: On September 28, 2000, the Commission released a Notice of Inquiry in this docket seeking comment on issues surrounding high-speed access to the Internet provided to subscribers using cable television infrastructure, or so-called ''cable modem services.'' The Commission inquires into what regulatory treatment, if any, should apply to cable modem services and the cable modem platform used in providing such services, and what impact such treatment will have on other providers of high-speed services. The underlying purpose of issuing this Notice of Inquiry is to create a national legal and policy framework for cable modem service that will foster competitive deployment of high-speed services by all providers and instill a degree of regulatory stability that will encourage investment in all high-speed networks. In this proceeding, the Commission will examine whether to continue its present market-based approach and whether and how to introduce a national policy framework for regulating high-speed services.

DATES: Comment must be filed on or before November 27, 2000. Reply comment must be filed on or before December 26, 2000.

ADDRESSES: Parties who choose to file comments or reply comments should file an original and four copies of each filing with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW–B204, 445 12th St. SW., Washington, DC 20554. Parties should also serve: (1) Johanna Mikes, Common Carrier Bureau, 445 12th Street, SW., Room 5–C163, Washington, DC 20554; (2) Christopher Libertelli, Common Carrier Bureau, 445 12th Street SW., Room 5–C264, Washington, DC 20554; (3) Carl Kandutsch, Cable Services Bureau, 445 12th Street, SW., Room 3–A832, Washington, DC 20554; (4) Douglas Sicker, Office of Engineering and Technology, 445 12th Street, SW., Room 7–A325, Washington DC 20554; (5) Robert Cannon, Office of Plans & Policy, 445 12th Street, SW., Room 7–B410, Washington, DC 20554; and (6) the Commission's copy contractor, International Transcription Service, Inc. (ITS), 445 12th Street, SW., CY–B402, Washington, DC 20554, (202) 857–3800, with copies of any documents filed in this proceeding.

FOR FURTHER INFORMATION CONTACT: Johanna Mikes or Christopher Libertelli, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *jmikes@fcc.gov* or *clibertelli@fcc.gov,* respectively; Carl Kandutsch, Cable Services Bureau, at (202) 418–7200; Robert Cannon, Office of Plans and Policy, at (202) 418–2030; and Douglas Sicker, Office of Engineering and Technology, at (202) 418–2478.

SUPPLEMENTARY INFORMATION: This document is a brief description of the Commission's Notice of Inquiry adopted September 28, 2000, and released September 28, 2000. The full text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Notices/index6.html*; or may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), CY B–400, 445 12th Street, SW., Washington, DC. Further information may also be obtained by calling the Common Carrier's TTY number: (202) 418–0484.

Synopsis of the Notice of Inquiry

1. The purpose of the Notice of Inquiry is to develop a factual record regarding the high-speed services provided by cable operators and the type of access sought by unaffiliated Internet Service Providers (ISPs), as well as the extent to which such access is necessary to benefit consumers or otherwise achieve desired policy goals. The Commission invites comments on alternative approaches to classifying cable modem service and the cable modem platform under the Communications Act and the implications of adopting each such classification.

2. The Commission seeks comment on various issues related to ''open access,'' including how to define the concept, what initiatives have taken place to date, and how market-based and regulatory approaches may affect the availability of high-speed services. The Notice of Inquiry asks whether achieving open access is a desirable policy goal and, if so, whether the Commission's existing policy of regulatory restraint will adequately achieve open access or whether the Commission should adopt a regulatory, or prescriptive, approach.

3. It also inquires whether the Commission's legal and policy framework for cable modem service or the cable modem platform should apply to all providers of high-speed services. The Notice of Inquiry invites comment on technical and operations concerns associated with achieving open access, and asks whether the Commission should pursue any further course of action, such as continuing its current approach or exercising its rulemaking or forbearance authority.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–25983 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

October 5, 2000.

Open Commission Meeting, Thursday, October 12, 2000

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 12, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

1. Office of Engineering and Technology and Wireless Telecommunications

Title: Amendment of the Commission's Rules with Regard to the 3650–3700 MHz Government Transfer Band (ET Docket No. 98–237, RM–9411); and The 4.9 GHz Band Transferred from Federal Government Use (WT Docket No. 00–32).

Summary: The Commission will consider a First Report and Order to reallocate the 3650–3700 MHz and the 4.9 GHz band transferred from Government to non-Govenrment use.

2. Common Carrier

Title: 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3.

Summary: The Commission will consider a Notice of Proposed Rule Making concerning issues regarding the accounting rules and ARMIS reporting requirements for incumbent local exchange carriers.

3. Wireless TeleCommunications

Title: Promotion of Competitive Networks in Local Telecommunications Markets (WT Docket No. 99–217); Wireless Communications Association International, Inc., Petition for Rule Making to Amend Section 1.400 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); and Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to Telephone Network (CC Docket No. 88–57).

Summary: The Commission will consider a First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 99–217, a Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and a Memorandum Opinion and Order in CC Docket No. 88–57), regarding obstacles to consumer's choice of telecommunications providers in multiple tenant environments.

4. Office of General Counsel

Title: Amendment of Section 19.735–203 of the Commission's Rules Concerning Nonpublic Information.

Summary: The Commission will consider an Order governing the misuse of nonpublic information (47 CFR 19.735–203).

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is *http://www.itsdocs.com/*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–26186 Filed 10–6–00; 1:19 pm]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of Optional Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of Agriculture and the Department of Interior are cancelling the following Optional Forms because they do not collect the correct information:

OF 285, Warehouse Supplies Order

OF 290, Receipt for Property, Fire Suppression

Both of these forms are replaced with the following new Optional Forms:

OF 316, Interagency Incident Waybill (NSN 7540–01–475–4307)

OF 326A, Interagency Incident Waybill—Continuation (NSN 7540–01–475–4306)

You can order the above mentioned forms from the Federal Supply Service, General Products Commodity Center, Fort Worth, TX (817) 978–2508.

DATES: Effective October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: September 1, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–25988 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Public Meeting on Medicare Coverage of Clinical Trials

AGENCY: Agency for Healthcare Research and Quality (AHRQ) formerly known as the Agency for Health Care Policy and Research (AHCPR).

ACTION: Notice of public meeting.

SUMMARY: In the past, Medicare has not paid for health care services provided as part of clinical trials because of their experimental nature. To carry out an executive memorandum from the President of the United States to the Secretary of Health and Human Services received on June 7, 2000 directing Medicare to provide for payment of routine patient care costs incurred by Medicare beneficiaries in connection with participation in clinical trials, the Health Care Financing Administration (HCFA) has issued a National Coverage Decision. In order to implement this new coverage policy for routine costs in clinical trials, HCFA must define the clinical trials for which payment of routine costs would be appropriate. Therefore, HCFA requested AHRQ to convene a multi-agency Federal group to develop readily verifiable criteria by which to identify trials that meet an appropriate standard of quality. The qualifying criteria will be developed under the authority to support health care research in § 1142 of the Social Security Act (Act). This notice announces a public meeting for the purpose of receiving oral and written comments on easily verifiable qualifying criteria for identifying sound clinical trials appropriate for Medicare coverage.

DATES: The meeting will take place on October 20, 2000, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at the Agency for Healthcare Research and Quality Conference Center, 6010 Executive Blvd., 4th Floor, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nilam Patel, M.P.H., Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; phone: (301) 594–

0236; Fax: (301) 594–4027; E-mail: *npatel@ahrq.gov.*

Arrangements for the Public Meeting: All representatives of organizations and other individuals who wish to attend, provide relevant written comments and information to AHRQ, and/or make a brief (10 minutes or less) oral statement at the meeting, must register with Nilam Patel, AHRQ, at the above address no later than three days prior to the date of the meeting. A copy of written materials should also be submitted to Ms. Patel. On the day of the meeting, presenters are requested to bring 25 copies of their written materials for distribution.

If sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, at (301) 594–6662 no later than three days before the meeting date.

SUPPLEMENTARY INFORMATION:

1. Background

In June, 2000, the President of the United States issued an executive memorandum directing the Secretary of Health and Human Resources to ''explicitly authorize Medicare payment for routine patient care costs * * * and costs due to medical complications associated with participation in clinical trials.'' In keeping with the President's directive, HCFA has developed and added a new section in the Medicare Coverage Issues Manual that will implement national coverage of routine costs of qualified clinical trials. For the purposes of this national coverage decision, routine costs of clinical trials include all items and services that are otherwise generally available to Medicare beneficiaries (conventional care); for example, hospital services, physician services, and diagnostic tests that are not statutorily excluded from coverage. Certain costs, such as costs for the investigational item or service itself, data collection-related costs, and items and services provided free of charge by the sponsor will not be covered.

In order to implement the coverage policy, a system must be in place to help identify trials that meet an appropriate standard of quality and for which it is appropriate for Medicare to pay the associated routine costs. HCFA requested AHRQ to form a multi-agency Federal group to develop qualifying criteria that would indicate a high probability that a trial has the following desirable characteristics of a scientifically sound clinical trial:

(1) The principal purpose of the trial is to test whether the intervention potentially improves the participants' health outcomes;

(2) The trial is well-supported by available scientific and medical information or it is intended to clarify or establish the health outcomes of interventions already in common clinical use;

(3) The trial does not unjustifiably duplicate existing studies;

(4) The trial design is appropriate to answer the research question being asked in the trial;

(5) The trial is sponsored by a credible organization or conducted by an individual capable of executing the proposed trial successfully;

(6) The trial is in compliance with Federal regulations relating to the protection of human subjects; and

(7) The trial is conducted according to appropriate standards of scientific integrity.

Certain trials are presumed by AHRQ, and the other members of the multi-agency panel that it has convened, to be of sound quality and to have these desirable characteristics. Guided by the assumptions of the multi-agency group and discussions with AHRQ, HFCA announced both long term and short term types of automatic qualification for Medicare coverage of the routine costs of clinical trials in its related NCD.

''Effective September 19, 2000, clinical trials that are deemed to be automatically qualified are:

1. Trials funded by NIH, CDC, AHRQ, HCFA, DOD, and VA;

2. Trials supported by centers or cooperative groups that are funded by the NIH, CDC, AHRQ, HCFA, DOD and VA;

3. Trials conducted under an investigational new drug application (IND) reviewed by the FDA; and

4. Drug trials that are exempt from having an IND under 21 CFR 312.2(b)(1) will be deemed automatically qualified until the qualifying criteria are developed and the certification process is in place. At that time the principal investigators of these trials must certify that the trials meet the qualifying criteria in order to maintain Medicare coverage of routine costs. This certification process will only affect the future status of the trial and will not be used to retroactively change the earlier deemed status.''

The Federal multi-agency group will be developing criteria for identifying other trials that are likely to have the seven desirable characteristics of clinical trials. (From HCFA's Final National Coverage Decisions posted on HCFA's website (http://www.hcfa.gov/quality/8d.htm).

2. Purpose

To gather pertinent information and views that would contribute to defining the qualifying criteria used to identify sound clinical trials appropriate for Medicare coverage, AHRQ is holding this meeting. We are soliciting comments about what qualifying criteria might be appropriate and adequate to capture the desirable characteristics of sound clinical trials. The criteria should be easily verifiable and, where possible, dichotomous (that is, objective yes/no responses). Some examples might be:

Is the trial approved by an investigational review board (IRB)?

Does the trial have a written protocol?

Has the trial been approved by a Federal agency?

Has the trial received any external, non-Federal funding?

Has the trial been reviewed by any external, non-Federal group?

Does a data safety and monitoring board provide independent oversight of the trial?

AHRQ is also interested in receiving information on the availability of relevant literature (citations or copies if possible) that might assist the panel in its formulation of the qualifying criteria.

Agenda

The meeting will begin at 9 a.m. and continue through 12 p.m. If more requests to make oral statements are received than can be accommodated at this meeting, the chair person will allocate speaking time in a manner that attempts, to the extent possible, to have a range of information, findings and views presented orally. Those who cannot be granted speaking time because of time constraints are assured that their written comments will be considered along with other evidence during the course of further discussions and report preparation.

Due to time constraints, this Notice is published within the recommended 15 days prior to holding this public meeting.

Dated: October 4, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–25993 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–162]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 14th set of toxicological profiles, which consists of seven updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 23, 2001. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Comments regarding the draft toxicological profiles should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–162. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–(800)447–1544 or (404)639–6345.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744) and November 17, 1997 (62 FR 61332). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2000.

Document	Hazardous substance	CAS No.
1	ALDRIN	000060–57–1
	DIELDRIN	000309–00–2
2	BERYLLIUM	007440–41–7
3	CREOSOTE	008001–58–9
	COAL TARS	008007–45–2
	COAL TAR PITCH	065996–93–2
4	DDT	000050–29–3
	DDD	000072–54–8
	DDE	000072–55–9
5	DI(2-ETHYLHEXYL)PHTHALATE	000117–81–7
6	HEXACHLOROBENZENE	000118–74–1
7	METHOXYCHLOR	000072–43–5

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: September 25, 2000.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–24979 Filed 10–10–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., October 24, 2000. 8:30 a.m.–12 p.m., October 25, 2000.

Place: Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone 703/418–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Agenda items include: Update on Case Management of Children with Lead Poisoning issues, Medicaid issues, Educational, Environmental, Medical, Developmental, and Nutritional Management Policy Document updates, and Impact of Dissemination and Evaluation of Case Management Recommendations. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Contact Person for More Information: Becky Wright, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/639–1789, fax 404/639–2570.

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: October 4, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–26135 Filed 10–6–00; 2:43 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

This notice is published less than 15 days prior to the meeting due to administrative delay.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2:15 p.m., October 23, 2000. 8:30 a.m.–3:45 p.m., October 24, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:00 a.m. and 8:30 a.m. or 12:30 p.m. and 1:00 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: a report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; an update on the IOM Report, Vaccines for the 21st Century; an update on Pandemic Planning; a discussion of the IOM Report on Immunization Funding; NVAC Polio Containment Workgroup Report; Vaccine Safety and Communication Subcommittee Report; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; a report on Global Immunization Initiatives; discussions on Malaria Vaccine Initiative; a report on HIV Vaccine Status; Measles Eradication in the Americas; ACCV Annual Report; VRPBC Highlights; and ACIP Highlights.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:15 p.m.–5 p.m., October 23, 2000.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items will include discussions on a proposal to hold a Workshop on Oral Vaccines and an update on the Workshop on Cytomegalovirus Vaccine development.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:15 p.m.-5 p.m., October 23, 2000.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include discussions on adult immunization standards; the adult immunization action plan; school-based and other institutional immunization requirements; and unmet needs priorities.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:15 p.m.–5 p.m., October 23, 2000.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Update on vaccine-related activities; an update on the

IOM vaccine safety contract; and a follow-up to the Communications Workshop.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

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: October 4, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–26134 Filed 10–6–00; 2:43 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel meetings.

Name: Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students Peer Review Group.

Date and Time: November 13–14, 2000.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: November 13, 2000, 8 a.m. to 10 a.m.

Closed on: November 13, 2000, 10 a.m. to 6 p.m., November 14, 2000, 8 a.m. to 6 p.m.

Name: Residencies in the Practice of Pediatric Dentistry and Residencies and Advanced Training in the Practice of General Dentistry Peer Review Group.

Date and Time: December 4–7, 2000.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: December 4, 2000, 8 a.m. to 10 a.m.

Closed on: December 4, 2000, 10 a.m. to 6 p.m.; December 5–7, 2000, 8 a.m. to 6 p.m.

Name: Residencies Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group I.

Date and Time: December 11–14, 2000.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: December 11, 2000, 8 a.m. to 10 a.m.

Closed on: December 11, 2000, 10 a.m. to 6 p.m., December 12–14, 2000, 8 a.m. to 6 p.m.

Name: Residencies Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group II.

Date and Time: January 8–11, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: January 8, 2001, 8 a.m. to 10 a.m.

Closed on: January 8, 2001, 10 a.m. to 6 p.m., January 9–11, 2001, 8 a.m. to 6 p.m.

Name: Preventive Medicine Residency Programs Peer Review Group.

Date and Time: January 8–11, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: January 16, 2001, 8 a.m. to 10 a.m.

Closed on: January 16, 2001, 10 a.m. to 6 p.m., January 17–19, 2001, 8 a.m. to 6 p.m.

Name: Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.

Date and Time: January 22–25, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: January 22, 2001, 8 a.m. to 10 a.m.

Closed on: January 22, 2001, 10 a.m. to 6 p.m., January 23–25, 2001, 8 a.m. to 6 p.m.

Name: Podiatric Residency Training in Primary Care Peer Review Group.

Date and Time: February 5, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: February 5, 2001, 8 a.m. to 10 a.m.

Closed on: February 5, 2001, 10 a.m. to 6 p.m.

Name: Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.

Date and Time: February 26–March 1, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: February 26, 2001, 8 a.m. to 10 a.m.

Closed on: February 26, 2001, 10 a.m. to 6 p.m., February 27–March 1, 2001, 8 a.m. to 6 p.m.

Name: Nursing Workforce Diversity Program Peer Review Group.

Date and Time: March 5–8, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: March 5, 2001, 8 a.m. to 10 a.m.

Closed on: March 5, 2001, 10 a.m. to 6 p.m., March 6–8, 2001, 8 a.m. to 6 p.m.

Name: Centers of Excellence Peer Review Group.

Date and Time: March 12–15, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: March 12, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: March 12, 2001, 10:00 a.m. to 6:00 p.m.; March 13–15, 2001, 8:00 a.m. to 6:00 p.m.

Name: Public Health Training Centers Peer Review Group.

Date and Time: March 12–15, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: March 12, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: March 12, 2001, 10:00 a.m. to 6:00 p.m.; March 13–15, 2001, 8:00 a.m. to 6:00 p.m.

Name: Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.

Date and Time: March 26–29, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: March 26, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: March 26, 2001, 10:00 a.m. to 6:00 p.m.; March 27–29, 2001, 8:00 a.m. to 6:00 p.m.

Name: Geriatric Training Regarding Physicians and Dentists Peer Review Group.

Date and Time: March 26–29, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: March 26, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: March 26, 2001, 10:00 a.m. to 6:00 p.m.; March 27–29, 2001, 8:00 a.m. to 6:00 p.m.

Name: Basic/Area Health Education Centers Peer Review Group.

Date and Time: April 2–3, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 2, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 2, 2001, 10:00 a.m. to 6:00 p.m.; April 3, 2001, 8:00 a.m. to 6:00 p.m.

Name: Model/Area Health Education Centers Peer Review Group.

Date and Time: April 4–5, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 4, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 4, 2001, 10:00 a.m. to 6:00 p.m.; April 5, 2001, 8:00 a.m. to 6:00 p.m.

Name: Allied Health Project Grants Peer Review Group.

Date and Time: April 17–20, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 17, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 17, 2001, 10:00 a.m. to 6:00 p.m.; April 18–20, 2001, 8:00 a.m. to 6:00 p.m.

Name: Grants for Physician Assistant Training Peer Review Group.

Date and Time: April 17–20, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 17, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 17, 2001, 10:00 a.m. to 6:00 p.m.; April 18–20, 2001, 8:00 a.m. to 6:00 p.m.

Name: Health Careers Opportunity Program Peer Review Group.

Date and Time: April 23–26, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 23, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 23, 2001, 10:00 a.m. to 6:00 p.m.; April 24–26, 2001, 8:00 a.m. to 6:00 p.m.

Name: Advanced Education Nursing Peer Review Group I.

Date and Time: April 30–May 3, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: April 30, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: April 30, 2001, 10:00 a.m. to 6:00 p.m.; May 1–3, 2001, 8:00 a.m. to 6:00 p.m.

Name: Advanced Education Nursing Peer Review Group II.

Date and Time: May 7–10, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: May 7, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: May 7, 2001, 10:00 a.m. to 6:00 p.m.; May 8–10, 2001, 8:00 a.m. to 6:00 p.m.

Name: Advanced Education Nursing Peer Review Group III.

Date and Time: May 14–17, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: May 14, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: May 14, 2001, 10:00 a.m. to 6:00 p.m.; May 15–17, 2001, 8:00 a.m. to 6:00 p.m.

Name: Basic Nurse Education and Practice Program Peer Review Group.

Date and Time: May 21–24, 2001.

Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Open on: May 21, 2001, 8:00 a.m. to 10:00 a.m.

Closed on: May 21, 2001, 10:00 a.m. to 6:00 p.m.; May 22–24, 2001, 8:00 a.m. to 6:00 p.m.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meetings will be closed at approximately 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members or other relevant information should write or contact Ms. Jennifer Burks, Director, Office of Extramural Program Review, Bureau of Health Professions, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–6339.

Dated: October 4, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–26024 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Comprehensive Conservation Plan and Summary of the Comprehensive Conservation Plan for Ouray National Wildlife Refuge, Vernal, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Ouray National Wildlife Refuge Comprehensive Conservation Plan and Summary of the Comprehensive Conservation Plan. These documents describe how the FWS intends to manage the Ouray NWR for the next 10–15 years.

ADDRESSES: A copy of the Plan or Summary may be obtained by writing to U.S. Fish and Wildlife Service, HC 69, Box 232, Randlett, UT 84063–9729. The Plan can also be downloaded from *http://www. r6.fws.gov/larp/.*

FOR FURTHER INFORMATION CONTACT: Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Ouray NWR is located in northeast Utah. Implementation of the Plan will focus on adaptive resource management of wetland, grassland, and semidesert shrubland habitats, restoration and improved management of riparian bottomlands, recovery of endangered fish species of the Upper Colorado River Ecosystem, and opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for wildlife-dependent recreation will continue to be provided.

Dated: October 4, 2000.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 00–26003 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''victoria_davis@fws.gov''. Please submit comments over the internet 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 Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, 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.

DATES: Written data or comments on these applications must be received, at the address given below, by November 13, 2000.

ADDRESSES: Documents and other information submitted with these applications are available for review,

subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: *Applicant:* Clark W. Brandon, Arnold Air Force Base Tennessee, Arnold Air Force Base, Tennessee, TE034379–0

The applicant requests authorization to harass and take (enter maternity colony once per year, observe evening roost emergence, capture, band, and place recording thermometers into maternity colonies the endangered gray bat, *Myotis grisescens* and Indiana bat, *Myotis sodalis*, throughout the species range on Arnold Air Force Base Tennessee, for the purpose of enhancement of survival of the species.

Dated: October 4, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–26001 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''victoria_davis@fws.gov''. Please submit comments over the internet 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 Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, 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.

DATES: Written data or comments on these applications must be received, at the address given below, by November 13, 2000.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: *Applicant:* Jonathan M. Stober, Jones Ecological Research Center, Newton, Georigia, TE034156–0

The applicant requests authorization to take (capture, band, install inserts, and harass during nest monitoring and construction of artificial cavities) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range, for the purpose of enhancement of survival of the species.

Dated: October 3, 2000.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–26002 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–09–1420–00]

Arizona; Notice of Filing of Plats of Survey

September 28, 2000.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 15 East, (south boundary), the east, west and north boundaries and the subdivisional lines, Township 29 North, Range 15 East of the Gila and Salt River Meridian, Arizona, accepted July 17, 2000 and officially filed July 28, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 16 East, the Fourth Guide Meridian East through Township 29 North, the north boundary and the subdivisional lines and the subdivision of section 34, Township 29 North, Range 16 East of the Gila and Salt River Meridian, Arizona, accepted July 20, 2000 and officially filed August 4, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 17 East, (south boundary), the east and north boundaries and the subdivisional lines Township 29 North, Range 17 East of the Gila and Salt River Meridian, Arizona, accepted July 25, 2000 and officially filed August 4, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the corrective resurvey of a portion of the subdivision of section 32 and a metes-and-bounds survey in section 32, Township 11 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted August 25, 2000 and officially filed September 1, 2000.

This plat was prepared at the request of the United States Forest Service.

A plat representing the survey of the Sixth Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines, Township 33 North, Range 25 East of the Gila and Salt River Meridian, Arizona, accepted July 27, 2000 and officially filed August 10, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the east and north boundaries, and the subdivisional lines, Township 33 North, Range 26 East of the Gila and Salt River Meridian, Arizona, accepted July 31, 2000 and officially filed August 10, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat in two sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the subdivision of section 25, Township 10 North, Range 6 West of the Gila and Salt River Meridian, Arizona, accepted August 25, 2000 and officially filed September 1, 2000.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 35 North, Range 7 West of the Gila and Salt River Meridian, Arizona accepted September 18, 2000 and officially filed September 22, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 34 North, Range 8 West of the Gila and Salt River Meridian, Arizona, accepted September 18, 2000 and officially filed September 22, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat in six sheets, representing the dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, the subdivision of section 15 and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 35 North, Range 8 West of the Gila and Salt River Meridian, Arizona, accepted September 5, 2000 and officially filed September 15, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat in two sheets, Township 22 North, Range 18 West, sections 9, 14, 15 and 23 of the Gila and Salt River Meridian, Arizona, accepted August 14, 2000 and officially filed August 24, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, the subdivision of section 2 and the metes-and-bounds survey in sections 2 and 11, Township 11 South, Range 25 West of the Gila and Salt River Meridian, Arizona, accepted May 15, 2000 and officially filed May 25, 2000.

This plat was prepared at the request of the Bureau of Land Management, Yuma Field Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 00–26036 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0006).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR), titled ''30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.'' We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments by December 11, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. 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 may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the regulations requiring the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

OMB Control Number: 1010–0006.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that

accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify filing fees for these transfer applications.

The MMS uses the information required by 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.
- Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.
- Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Verify that lessees have adequate bonding coverage. Respondents must submit their bonds certification forms: Form MMS–2028, Outer Continental Shelf Mineral Lessee's and Operator's Bond and Act of Suretyship,'' and Form MMS–2028A, ''Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship.'' The MMS uses these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

Responses are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. The MMS will protect specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act and 30 CFR 256.10(d).

Frequency: The frequency of reporting is ''on occasion.''

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees, as well as the affected states and local governments.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved'' hour burden for this information collection is a total of 17,856 hours. The major components of this burden and burden per response are:

- Submit qualification of bidders for joint bids and statements/reports of production (4.5 hours).
- Submit bids (1 hour).
- Submit joint lease agreements (4 hours).
- Execute forms MMS–2028 and MMS–2028A (¼ hour).
- Demonstrate ability to carry out financial obligations, request approval for other forms of security, or request reduction in supplemental bond requirements (4 hours).
- Provide plan to fund lease-specific abandonment account and related information (4 hours).
- Provide third-party guarantee, indemnity agreement, related notices, and annual report (8 hours).
- File application for assignment or transfer for approval (5 hours).
- File required documents for record purposes (½ hour)
- Request relinquishment of lease (5 hours).

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved ''non-hour cost'' burden for this information collection is a total of $470,875. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($185 per application) or to file non-required documents for record purposes ($25 per filing).

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. Other than the filing fees, we have not identified any non-hour cost burdens and need to know if you have other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Dated: September 28, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–25765 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–MR–W

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–888–890 (Preliminary)]

Stainless Steel Angle From Japan, Korea, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan, Korea, and Spain of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On August 18, 2000, a petition was filed with the Commission and the Department of Commerce by Slater Steels Corporation, Specialty Alloys Division, Fort Wayne, IN, and the United States Steelworkers of America, AFL–CIO/CLC, Pittsburgh PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of stainless steel angle from Japan, Korea, and Spain. Accordingly, effective August 18, 2000, the Commission instituted antidumping duty investigations Nos. 73–TA–888–890 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 25, 2000 (65 FR 51845). The conference was held in Washington, DC, on September 8, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 2, 2000. The views of the Commission are contained in USITC Publication 3356 (October 2000), entitled Stainless Steel Angle from Japan, Korea, and Spain: Investigations Nos. 731–TA–888–890 (Preliminary).

By order of the Commission.

Dated: Issued: October 3, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–26020 Filed 10–10–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–436]

In the Matter of Certain WAP-Compatible Wireless Communication Devices, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 8, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Geoworks Corporation of Alameda, California. A supplement to the complaint was filed on September 29, 2000. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain WAP-compatible (wireless application protocol) wireless communication devices, components thereof, and products containing same by reason of infringement of claims 1–8 of U.S. Letters Patent 5,327,529. The complaint further alleges that there exists in the United States an industry as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 3, 2000, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain WAP-compatible wireless communication devices, components thereof, or products containing same by reason of infringement of claims 1–7 or 8 of U.S. Letters Patent 5,327,529; and whether

there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Geoworks Corporation, 960 Atlantic Avenue, Alameda, California 94501.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Phone.com, Inc., 800 Chesapeake Drive, Redwood City, California 94063

Sanyo Electronic Co. Ltd. of Japan, 5–5 Keihan-Hondori, 2-chome, Moriguchi City, Osaka 570–8677, Japan

Sanyo North America Corporation, 2055 Sanyo Avenue, San Diego, California 92154

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 4, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–26021 Filed 10–10–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 3, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Chief Financial Officer.

Title: Salary Offset.

OMB Number: 1225–0038.

Affected Public: Individuals or households..

Total Respondents: 150.

Frequency: On Occasion.

Total Responses: 300.

Average Time Per Response: 1.25.

Total Burden Hours: 375.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Total Annualized Capital/Startup Costs: $0.

Description: The Department of Labor (DOL) collects information from debtors to assist in determining whether an individual is actually indebted to DOL, and if so indebted, to evaluate the individuals ability to repay the debt.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–26039 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–48; Exemption Application No. D–10802, et al.]

Grant of Individual Exemptions; Columbia Energy Group (Columbia)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In

addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Columbia Energy Group (Columbia), Located in Herndon, Virginia

[Prohibited Transaction Exemption 2000–48; Exemption Application No. D–10802]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Columbia Insurance Corporation, Ltd. (CICL) in connection with an insurance contract sold by Employers Insurance of Wausau (Wausau), or any successor insurance company to Wausau which is unrelated to Columbia, to provide long-term disability benefits to participants in Columbia's Long Term Disability Plan (the Plan), provided the following conditions are met:

(a) CICL—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Columbia that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving CICL, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Wausau or any successor insurer will be similar to formulae used by other insurers providing comparable long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company (Best's). The reinsurance arrangement between the insurers and CICL will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should CICL be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) CICL retains an independent fiduciary (the Independent Fiduciary), at Columbia's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Columbia or CICL (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in, Columbia or CICL (or any Affiliate of either);

(3) Is not a corporation or partnership in which Columbia or CICL has an ownership interest or is a partner;

(4) Does not have an ownership interest in Columbia or CICL, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Columbia, CICL, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Columbia, CICL, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 17, 2000 at 65 FR 50237.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department,

telephone (202) 219–8881. (This is not a toll-free number.)

Actuarial Sciences Associates, Inc. (ASA) and ASA Fiduciary Counselors Inc. (ASA Counselors), Located in Alexandria, VA

[Prohibited Transaction Exemption 2000–47; Exemption Application No: D–10879]

Exemption

I. General Transactions

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to the Plumbers and Pipe Fitters National Pension Fund (the Fund) and an account (the Account) that holds certain assets of the Fund managed by ASA or ASA Counselors, while serving as independent named fiduciary (the Named Fiduciary) in connection with Prohibited Transaction Exemption 99–46 (PTE 99–46)(64 FR 61944, November 15, 1999); provided that the following conditions are satisfied:

(a) ASA or ASA Counselors, as Named Fiduciary of the Account, is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $50,000,000, and shareholders' equity or partners' equity, as defined in Section III(h), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section III(i), below, the party in interest or its affiliate, as defined in Section III(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) appoint or terminate the Named Fiduciary as a manager of the Account, or

(2) negotiate the terms of the management agreement with the Named Fiduciary (including renewals or modifications thereof) on behalf of the Fund;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) [1] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1) [2] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87) [3] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Account under the authority and general direction of the Named Fiduciary, and either the Named Fiduciary, or (so long as the Named Fiduciary retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the Named Fiduciary, makes the decision on behalf of the Account to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(e) The party in interest dealing with the Account is neither the Named Fiduciary nor a person related to the Named Fiduciary, as defined in Section III(f), below;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Named Fiduciary, the terms of the transaction are at least as favorable to the Account as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the Named Fiduciary nor any affiliate thereof, as defined in Section III(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in the Named Fiduciary is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(g), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal.

II. Specific Exemption Involving Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 8, 1999, to the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation owned by the Account managed by the Named Fiduciary to a party in interest with respect to the Fund, if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

III. Definitions

(a) For purposes of Section I(b), above, of this exemption, an ''affiliate'' of a person means—

(1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) any director of the person or any employee of the person who is a highly compensated employee, as described in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(g), above, of this exemption, an ''affiliate'' of a person means—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any director of, relative of, or partner in, any such person,

[1] 46 FR 7527, January 23, 1981.

[2] 48 FR 895, January 7, 1983.

[3] 47 FR 21331, May 18, 1982.

(3) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of Fund assets.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''goods'' includes all things which are movable or which are fixtures used by the Account but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(e) The term ''party in interest'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(f) The Named Fiduciary is ''related'' to a party in interest for purposes of Section I(e), above, of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in the Named Fiduciary, or if the Named Fiduciary (or a person controlling, or controlled by, the Named Fiduciary) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term ''interest'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(g) The term ''relative'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(h) For purposes of Section I(a) of this exemption, the term ''shareholders'' equity'' or ''partners'' equity'' means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(i) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of the Named Fiduciary occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

Temporary Nature of Exemption

The Department has determined that the relief provided to ASA and ASA Counselors by this exemption will be temporary in nature. The exemption is effective for ASA from November 8, 1999, through December 20, 1999, and for ASA Counselors from December 20, 1999, until the resignation of ASA Counselors and the appointment of a replacement independent Named Fiduciary for the Account. In accordance with Section 14 of the Independent Named Fiduciary Agreement (the Agreement), the Department was notified that ASA Counselors intends to resign as Named Fiduciary for the Account and terminate the Agreement on the *later* of: (a) Thirty (30) days from September 12, 2000; or (b) the appointment of a replacement independent Named Fiduciary for the Account. Accordingly, in order to accommodate the latest effective date of the resignation of ASA Counselors, the Department has determined that the relief provided by this exemption is available until the *later of*: (a) October 12, 2000, or (b) the effective date of the appointment of a replacement independent Named Fiduciary for the Account that is acceptable to the Department.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consisted of the Trustees of the Fund and any interested persons who commented in writing to the Department in connection with Prohibited Transaction Exemption 99–46 (PTE 99–46). The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on June 26, 2000. All comments and requests for a hearing were due on August 10, 2000.

Prior to August 10, 2000, interested persons contacted the Department by telephone and in writing in order to point out that the documents provided in the notice to interested persons referenced the application number D–10514 for PTE 99–46, rather than the application number D–10879 for the subject case. In light of this error, the Department required, and the applicants agreed, that a corrected copy of these documents would be sent to all interested persons by first class mail. Further, in order to allow interested parties to have the full comment period after receiving the revised notice, the Department required, and the applicants agreed to, an extension of the deadline when comments would be due on the proposed exemption. In a letter dated July 20, 2000, the applicants confirmed that it had re-notified all interested persons, as of July 19, 2000. Accordingly, all comments and requests for a hearing were due on August 31, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from eleven (11) commentators. At the close of the comment period, the Department forwarded copies of these letters to the applicant for response. The applicant responded in writing to the various concerns raised by the commentators. A description of the comments and the applicant's responses thereto are summarized below.

A number of commentators objected to the acquisition by the Fund of the Diplomat Resort and Country Club (the

Diplomat Project) which was the subject of PTE 99–46, and expressed concern over the ASA Counselors' authority under the exemption to use assets of the Fund for the operation of the Diplomat Project. In response to the comment, the applicants noted that the Department previously granted PTE 99–46 which permitted the investment. Further, the applicants maintain that the Diplomat Project involves a large hotel, country club, and marina. Given the number of participants, contributing employers, and service providers for the Fund and the scope of the Diplomat Project, in the opinion of the applicants, there would be significant administrative difficulties in identifying and preventing inadvertent prohibited transactions. In the opinion of the applicants, the granting of this exemption to ASA Counselors, the Named Fiduciary, will eliminate the risk that a prohibited transaction will occur during the course of building, selling, or operating the Diplomat Project.

One commentator asked whether CS Capital Management had any ties to Capital Consultants, Inc. or Wilshire Financial Services. In response, CS Capital Management has confirmed that they do not have ties to either organization.

After giving full consideration to the entire record, including the written comments from the commentators, the Department has decided to grant the exemption. In this regard, the comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 26, 2000, at 65 FR 39435.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of October, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–26029 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10538, et al.]

Proposed Exemptions; Sei Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

SEI Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC), Located in Oaks, PA

[Application No. D–10538]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). [1]

Section I. Proposed Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective June 19, 1996, to the purchase of shares of one or more open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA), to which SEI Investments, SIMC, STC, or any of their affiliates (collectively, SEI) serve as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans) whose assets are held by SEI as trustee, investment manager, or as a discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) with SEI (the Purchase Transaction), provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to SEI, as defined in paragraph (g) of Section III below, receives advance written notice of the Purchase Transaction and full and written information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the Plan's assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI;

(3) A statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan;

(4) A statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds;

(5) The identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds;

(6) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and

(7) Upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, the Second Fiduciary gives SEI prior written approval with respect to—

(1) Each Purchase Transaction, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The transaction date proposed by SEI; and

(3) The receipt of confirmation statements, described below in paragraph (g)(1) and (g)(2), by facsimile or electronic mail.

(c) No sales commissions or other fees are paid by the Plans in connection with a Purchase Transaction.

(d) All transferred assets are securities for which market quotations are readily available, or cash.

(e) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary and constitute all of the assets held in the Account immediately prior to the transfer (other than Fund shares already held in the Account). With respect to any Plan assets transferred in-kind to an Account wich are not suitable for acquisition by the Funds, such assets are liquidated as soon as reasonably practicable and the cash proceeds are invested directly in Fund shares.

(f) With respect to assets transferred in-kind, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the ICA and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the Purchase Transaction determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of SEI.

(g) SEI sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, the following information:

(1) Not later than 30 business days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(B) The current market price, as of the date of the Purchase Transaction, of each of the assets involved in the Purchase Transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(2) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and

(B) The number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(h) With respect to each of the Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, SEI provides the Second Fiduciary with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the Fund to SEI.

(i) As to each Plan, the combined total of all fees received by SEI for the provision of services to the Plan, and in connection with a Purchase Transaction, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the Purchase Transaction between the Plan and the Fund are on a basis no less favorable to the Plan than dealings between the Fund and other shareholders.

(k) Between June 19, 1996 and the date this final exemption is granted, no Plan may enter into more than one Purchase Transaction with the Funds. However, subsequent to the granting of this exemption, a Second Fiduciary may engage in more than one Purchase Transaction provided that such Second Fiduciary allocates additional securities representing a different asset class to a Plan Account.

(l) SEI maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (m) of this Section I, to determine wither the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than SEI, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m) of this Section I.

(m)(1) Except as provided in paragraph (m)(2) of this Section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) of Section I above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (m)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of SEI or commercial or financial information which is privileged or confidential.

Section II. Availability of Prohibited Transaction Exemption (PTE) 77–4

Any purchase of Fund shares that complies with the conditions of Section I of this proposed exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4 (42 FR 18732, April 3, 1977).[2]

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''SEI'' means SEI Investments Company, SEI Investments Management Corporation, SEI Trust Company and any affiliate of SEI, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' means any open-end investment company or companies registered under the ICA for which SEI serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to SEI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to SEI if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with SEI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of SEI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from SEI for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of SEI (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the approval of any purchase, continued holding or redemption by the Plan of shares of the Funds; and (C) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

Effective Date: If granted, this proposed exemption will be effective as of June 19, 1996, with the exception of Section I(a)(7), which will applicable for Purchase Transactions occurring after the date of the final exemption.

Summary of Facts and Representations

Description of the Parties

1. *SEI Investments*, which is located in Oaks, Pennsylvania, is a financial

[2] In relevant part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve, in writing, purchases and sales of mutual fund shares on the basis of the disclosures give.

services company that was founded in 1968. SEI Investments and its affiliates provide a broad range of financial services to banks, institutional investors, investment advisers, and insurance companies, including funds evaluation services, trust accounting systems and brokerage and information services and has offices located throughout the United States and Canada. As of December 31, 1999, SEI Investments had total assets of $253,779,000.

2. *SIMC,* a wholly owned subsidiary of SEI Investments and also located in Oaks, Pennsylvania, currently provides the Funds described herein with overall investment management services (including selection and supervision of investment advisers), and regulatory reporting services. In addition, SIMC serves as transfer agent with respect to certain classes of Fund shares and as investment adviser to certain Fund portfolios. Further, SIMC serves as manager or administrator to more than 40 investment companies and portfolios as well as to various Plans. As of December 31, 1999, SIMC had total assets under management of approximately $64.3 billion.

3. *STC*, a state-chartered trust company incorporated under the laws of the Commonwealth of Pennsylvania, is located in Oaks, Pennsylvania. Formerly known as Eagle Trust Company, STC is a wholly owned subsidiary of SEI Investments and serves as trustee/investment manager of the Plans. As of December 31, 1999, STC had custody of approximately $35.5 billion in assets.

4. *The Plans,* as to which SIMC may serve as an investment manager or STC may serve as a trustee, consist of retirement plans qualified under section 401(a) of the Code which constitute ''pension plans'' as defined in section 3(2) of the Act, certain welfare plans as defined under section 3(1) of the Act and ''plans'' as defined in section 4975(e)(1) of the Code. The Plans do not include any plans sponsored by SEI.

5. *The Funds* to which the requested exemption will apply currently consist of the separate portfolios of the SEI Institutional Investments Trust (the Investments Trust), the SEI Institutional Managed Trust (the Managed Trust) and the SEI Institutional International Trust (the SIT), all of which are investment companies registered under the ICA.[3] The Funds are further described as follows:

(a) *The Investments Trust* is a Massachusetts business trust established on March 1, 1995. It is a no-load, open-end management investment company which is available only to Plans and other institutional investors that retain SIMC as investment manager. Currently, nine portfolios comprise the Investments Trust. They are the Large Cap Fund, the Large Cap Value Fund, the Large Cap Growth Fund, the Small Cap Fund, the International Equity Fund, the Core Fixed Income Fund, the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund.[4] Each of the portfolios of the Investments Trust issues only one class of beneficial interests (*i.e.*, shares). No sales loads or fees payable under Rule 12b–1 of the ICA (the Rule 12b–1 Fees) are paid with respect to Investments Trust shares.

(b) *The Managed Trust* is a Massachusetts business trust that was established on October 20, 1986. It is a no-load, open-end management investment company currently having the following twelve portfolios: the Large Cap Value Fund, the Large Cap Growth Fund, the Tax-Managed Large Cap Fund, the Small Cap Value Fund, the Small Cap Growth Fund, the Capital Appreciation Fund, the Balanced Fund, the Mid-Cap Fund, the Equity Income Fund, the Core Fixed Income Fund, the Bond Fund and the High Yield Bond Fund.[5] Each of the Fund portfolios of the Managed Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors, including Plans. No sales loads or Rule 12b–1 Fees are paid with respect to such shares.

(c) *SIT*, a Massachusetts business trust established on June 30, 1988, currently offers the following four portfolios: the International Equity Fund, the Emerging Markets Equity Fund, the Emerging Markets Debt Fund and the International Fixed Income Fund. Each of the portfolios of the International Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors including Plans. No sales loads or Rule 12b-1 fees are paid with respect to such shares.

6. SIMC (including its subsidiaries) acts as the administrator of all of the Funds and serves as investment adviser to all of the Funds with the exception of the International Trust's International Fixed Income Fund, which is advised by Strategic Fixed Income LLC, an unaffiliated investment adviser. However, for this Fund, SIMC retains overall investment advisory supervision including the formulation of investment policy. In addition, SIMC generally follows a ''manager of managers'' approach to the Funds whereby all of the assets of the Funds are advised by sub-advisers which are independent of SIMC.

As administrator and investment adviser, SIMC retains independent sub-advisers, makes overall investment decisions with respect to the assets of each Fund, and continuously reviews, supervises and administers each Fund's investment program. SIMC receives an investment advisory fee from each Fund for such services and is responsible for paying the sub-advisers. The Funds may also pay certain transfer agent and administrative fees to SIMC or to other SEI affiliates.

The Funds are offered and sold exclusively through the use of prospectuses and materials (which have been, or will be, filed, as required, with the various federal and state securities regulatory authorities prior to their distribution) and are offered and sold in full compliance with regulations of the SEC. Shareholders of the Funds periodically receive the following disclosures concerning the Funds as mandated by the SEC: (a) a copy of the prospectus, which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. With respect to the Plans, SIMC or the custodian reports all transactions in shares of the Funds in periodic account statements provided to each of the Plans.

The Asset Allocation Strategy (the Strategy)

7. According to SEI, the Strategy can be viewed as a series of separate, but interrelated, asset allocation transactions provided by SIMC and its affiliates to a Plan. In effect, the Strategy constitutes a set of investment guidelines established in advance by the Second Fiduciary, under which SIMC may be retained to exercise investment discretion with respect to all of the Plan's assets covered by such Strategy.

As Representations 7 and 8 illustrate, the specific steps involved in creating

[3] Because SEI would like the exemption to apply prospectively to any Fund in which a Plan invests and with respect to which SEI or any of its affiliates may provide services, SEI represents that all other future Funds that utilize the requested exemption will assume similar structures and the Plan investments therein will be subject to the terms and conditions of this exemption.

[4] It should be noted that although the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund constitute part of the Investments Trust, these Funds are no longer open.

[5] It should be noted that the Bond Fund is presently closed.

and implementing the Strategy generally can be described as follows:

(a) The development of a Plan-level asset allocation policy, *i.e.*, the selection of broad asset classes and percentages of Plan assets to be allocated among those asset classes (*e.g.*, one such class may be ''domestic equities'').

(b) The development of a more refined asset allocation policy within each asset class (*e.g.*, ''domestic equities'' may be further divided into ''large-cap,'' ''small-cap,'' ''growth,'' etc.).

(c) The Second Fiduciary's determination of what asset classes SIMC will manage.

(d) With respect to each asset class that will be invested in shares of the Funds, the selection and liquidation of securities, and the purchase of Fund shares (in-kind or in cash).

(e) The retention of SIMC as the discretionary asset manager with respect to the Plan or specified asset classes.

Theoretically, a Plan may retain SIMC to perform one or more component Strategy functions separately, even though they are all offered as part of the same package (in other words, tasks (a) through (e) may be purchased separately), and the Strategy steps may occur in different orders or concurrently.

Thus, as a preliminary step, SIMC, as investment adviser, must first develop the overall asset allocation. Using its own proprietary software, SIMC will work with a Second Fiduciary of the Plan [6] to develop an asset allocation strategy that is based upon various objective and measurable criteria such as the Plan's employee population information, investment goals and risk tolerance. For this purpose, SIMC will assume that the Plan will implement the Strategy by investing assets in the Funds, irrespective of whether the Strategy is being implemented through in-kind or cash transfers.

A Strategy will represent a different asset allocation model. If SIMC manages all of the Plan's assets, there will be only one Strategy per Plan. [7] Once the Strategy is proposed, it must be reviewed, approved and adopted by the Second Fiduciary. Although certain information is obtained in writing, generally this will be done in narrative format through a series of meetings and interviews. If two Plans provide the same inputs, SIMC's software will present both investors with the same generic Strategy.

Once a Strategy is selected by the Second Fiduciary, it may be modified only by such Second Fiduciary. No separate fee is being charged for an asset allocation. The fee for such services is included in SEI's Plan-level investment management fee.

After reviewing the Strategy, the Plan's Second Fiduciary must decide whether it will ask SIMC to manage part or all of the Plan's assets in accordance with the Strategy. For example, the Strategy may have a fixed income allocation and an equity allocation. Thus, it is possible that the Second Fiduciary may retain SIMC to manage Plan assets that are allocated to only one asset allocation.

The Purchase Transaction

8. In conjunction with the hiring of SIMC and the development and adoption of the Strategy, the Second Fiduciary will allocate certain assets of the Plan to an Account that is maintained by SIMC. In many cases, this transfer of fiduciary authority involves the Second Fiduciary's termination of one or more pre-existing agreements with investment managers who are not affiliated with SIMC. In other situations, it may involve a Second Fiduciary's decision to retain SIMC to manage only a portion (or portions) of the Plan's investment portfolio and the continued use of unaffiliated investment managers. Accordingly, the assets to be transferred to the Account may include an existing portfolio of securities representing a distinct asset class. However, because it invests Plan assets in the Funds rather than in individual securities and because of fiduciary liability concerns raised by taking responsibility for an existing portfolio of securities acquired at the direction of a different investment manager, SIMC prefers that such assets be liquidated before they are transferred to the Account.

In many cases, an existing securities portfolio may include securities that are suitable for investment by the Funds. Therefore, SEI recognizes that it may be appropriate to transfer such securities in-kind directly to the relevant Fund(s) in order to avoid transaction costs and potential market disruption that could occur from a sale of those securities by the Plan and the nearly simultaneous repurchase of those same securities by the Fund. Rather than require that the existing portfolio be liquidated before it is allocated to the Account, SIMC will accept an in-kind allocation of such securities to an Account, at the request of the Second Fiduciary. Whatever portfolio securities may be acceptable for an in-kind transfer will be determined by the sub-advisers to the Funds.

Specifically, upon obtaining a new client Plan that proposes to engage in a Purchase Transaction, SIMC will present to all Fund sub-advisers [8] a list of the Plan's portfolio securities.[9] Each sub-adviser will be asked to indicate which of those securities (and in what quantities) it would be interested in acquiring in connection with the Fund portfolio for which it is responsible. SIMC will then compile the results and forward them to the Second Fiduciary for approval or rejection.

In addition, SIMC will accept the entire securities portfolio, including those securities that are not suitable for investment by the Funds. Subsequently, any securities that are acceptable to the Funds will be transferred in-kind in exchange for Fund shares. Any securities that are not acceptable will be liquidated at the direction of SIMC.[10] Once SIMC has directed the liquidation of any securities of the Account that are not suitable for transfer to the Funds, SIMC will use the cash proceeds to buy Fund shares directly on behalf of the Plan.

9. SEI maintains that the in-kind transfers of Account assets in exchange for shares of the Funds will be ministerial transactions performed in

[6] The Strategy services that are subject to this exemption relate only to defined benefit plans, welfare plans and fiduciary-managed defined contribution plans but they do not cover participant-directed accounts.

[7] To the extent that SIMC is asked to manage only a portion of a Plan, it may develop one or more specific strategies, *e.g.*, an Equity Strategy or a Fixed Income Strategy.

[8] Although the requested exemption currently covers unaffiliated sub-advisers, SEI represents that it may wish to retain affiliated sub-advisers for the Funds in the future so that the benefits of the Purchase Transactions will not be diluted. SEI points out that the only theoretical way that an affiliated sub-adviser could act to the detriment of a Plan would be to agree to accept a security for in-kind transfer on terms that favored the Fund over the Plan. However, SEI believes that several factors protect the Plan from this action. First, when an affiliated sub-adviser checks off the securities it is willing to take in-kind, it is bidding for the same securities against unaffiliated sub-advisers. Second, when the sub-adviser determines which securities it is willing to take, it does not set a price at that time but agrees to take them at their fair market value. Third, the price on such transfer date (SEI will propose the transaction date but the Second Fiduciary will make the actual determination.) will be objectively determined in accordance with Rule 17a–7 (see Representation 13).

[9] A Sub-adviser will not be presented with the option of purchasing securities held in a Plan's portfolio for which there is no corresponding Fund. Instead, only those sub-advisers of Funds that may be used to implement the Strategy will be presented with a list of the Plan's securities for possible Purchase Transactions. Each sub-adviser will then be limited to acquiring only those securities which do not exceed in value the amount of Fund shares the Plan will be purchasing.

[10] SEI represents that brokerage transactions with respect to an Account may be executed by an affiliate of SIMC in accordance with the terms of PTE 86–128 (51 FR 41686, November 18, 1986). However, the Department expresses no opinion herein on whether such transactions will satisfy the terms and conditions of PTE 86–128.

accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the Fund, as determined by the Funds' sub-advisers; (b) satisfy the applicable requirements of the ICA and the Code; and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan will receive certain disclosures from SIMC and approve such transaction in writing.

10. With certain exceptions, SEI represents that the Purchase Transactions are similar to the in-kind exchange transactions described in PTE 93–72 (58 FR 51109, September 30, 1993) involving Western Asset Management Co. (WAMC). The first exception relates to the fact that SIMC proposes that a Plan participate in more than one Purchase Transaction over time, i.e., as the Second Fiduciary decides to allocate additional securities representing a different asset class to the Account, perhaps in connection with changing the Strategy.[11] In WAMC, concern was expressed by the Department about WAMC's ability to exercise its fiduciary authority to engage in (or to influence) exchanges in a manner that would allow WAMC to ''time'' transactions. In contrast to WAMC, SEI notes that SIMC does not (except for the limited purpose of disposing of those assets that are not suitable for in-kind transfer to the Funds) manage assets both ''inside'' and ''outside'' the Funds and all fiduciary discretion over which Plan assets will be allocated to the Funds remains with the Plan's Second Fiduciary.[12] According to SEI, the second exception relates to the valuation of the securities to be transferred. In this regard, SEI is following the valuation procedures under Rule 17a–7 of the ICA as set forth in Representation 13.

Notwithstanding the above, SEI represents that it will not permit a Plan to engage in more than one Purchase Transaction prior to the granting of this exemption so as to conform the Purchase Transaction more closely to PTE 93–72, the WAMC exemption, and the Rule 17a–7 valuation procedures that are set forth in the Department's ''conversion'' exemptions.[13]

Accordingly, SEI requests that the exemption apply retroactively and be made effective as of June 19, 1996 with respect to Purchase Transactions occurring at that time.[14] The Department concurs with this retroactivity date. However, it has imposed a requirement to the effect that Section I(a)(7) of the proposal, relating to SEI's dissemination to Second Fiduciaries of copies of the proposed and final exemptions, will be applicable to Purchase Transactions occurring after the exemption is granted.

Rebalancing

11. The Investment Management Agreement requires SIMC to rebalance the Account periodically among the Funds. In this regard, SIMC uses close-of-business values to determine the daily net asset value of assets held in an Account. Each Account has a pre-set ''trigger'' point for rebalancing purposes. Although the exact trigger may vary from Account to Account, SIMC typically rebalances an Account if an investment allocation varies by more than 4 percent from the target allocation. Generally, rebalancing occurs automatically and on the last day of any calendar month if any allocation deviates from its target percentage by more than an agreed upon percentage.

Advance Disclosure/Approval

12. Under the Investment Management Agreement, a Second Fiduciary will receive all of the disclosures required by PTE 77–4. In this regard, such information includes, but is not limited to, (a) a current prospectus for the Fund in which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Fund to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; and (f) the identity of all such securities that will be valued in accordance with Rule 17a–7(b)(4). In addition, for Purchase Transactions occurring after the date of the grant notice, SEI will provide copies of the proposed and final exemptions to the Second Fiduciary, upon request.

Based on these disclosures, the Second Fiduciary by executing the Investment Management Agreement will approve, in writing, the transfer of the Plan's assets to the corresponding Fund in exchange for shares of such Fund and the receipt by SEI of fees for services to the Fund. If the Second Fiduciary does not approve the use of the Funds as Plan investments, it will not retain SIMC as the Plan's investment manager. Additionally, if the Second Fiduciary does not approve the Purchase Transaction, the securities held by the Plan will be sold for cash on the open market and the transaction will proceed in accordance with PTE 77–4.

Valuation Procedures

13. The assets transferred by an Account to the Funds in connection with a Purchase Transaction will consist entirely of cash and marketable

[11] For example, a Second Fiduciary may hire SIMC to manage a domestic equity Account only so the initial Strategy would provide for allocation among domestic equity Funds. If the Second Fiduciary subsequently decides to expand the scope of SIMC's management authority to include international equities, it will transfer to the Account an existing portfolio of international equity securities in another Purchase Transaction. At a later date, the Second Fiduciary may decide to retain SIMC to manage the Plan's fixed income securities. So, the Second Fiduciary would engage in still another Purchase Transaction.

Under the foregoing circumstances, subsequent transfers of similar types of securities are not contemplated. Instead, SEI represents that a Second Fiduciary will be able to make a one-time, in-kind transfer of a distinct portion of the Plan's asset portfolio.

[12] It is represented that SIMC does not become a fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets) will be allocated to the Account. It is also represented that SEI may become a fiduciary with respect to a particular pool of assets (e.g., helping the Plan develop its Strategy) before those assets are ''converted'' into Fund shares.

[13] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995).

[14] SEI represents that SIMC accepted two or three new Plan clients which elected to engage in Purchase Transactions. In each case, the Plan (or its outside manager) expressly retained responsibility for (a) selecting the securities to be transferred and directing their transfer; (b) directing the sale of all other securities through SEI's brokerage affiliates; and (c) determining whether the securities were valued in accordance with Rule 17a–7 for purposes of the transfer. SEI further notes that its fiduciary responsibilities only commenced after the completion of the Purchase Transactions. Accordingly, SEI does not believe that exemptive relief is necessary with respect to these Purchase Transactions. However, because the determination of its fiduciary status is uncertain, SEI requests that the exemption be made retroactive to June 19, 1996 to cover the Purchase Transactions that occurred at that time.

securities. For this purpose, the value of the securities in the Account will be determined based on market value as of the close of business on the last business date prior to the transfer (the Account Valuation Date). The values on the Account Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the '40 Act. In this regard, the ''current market price'' for specific types of Account securities will be determined as follows:

(a) If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Account Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Account Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Account Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Account Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Account Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Account Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, SIMC intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to SEI and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.[15]

The securities received by a transferee Fund portfolio will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor Account. The per share value of the shares of each Fund portfolio issued to the Accounts will be based on the corresponding portfolio's then-current net asset value.

SEI will send by regular mail or personal delivery, or if applicable, by facsimile or electronic mail, the following information to the Second Fiduciary of a Plan that engages in a Purchase Transaction:

(a) Not later than 30 business days after completion of the transaction, a written confirmation of the transaction to each affected Plan. Such confirmation will contain (1) the identity of each security that is valued in accordance with Rule 17a–7(b)(4), as described above; (2) the price of each such security for purposes of the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(b) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains (1) the aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and (2) the number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per net asset value and the aggregate dollar value of the shares received).

Compliance With PTE 77–4

14. It is anticipated that most Purchase Transactions will occur when a Plan retains SIMC as a discretionary fiduciary under the Investment Management Agreement in connection with an existing portfolio of assets or possibly, STC may serve as a directed trustee and be instructed by a Plan to engage in a Purchase Transaction.[16] Thus, once the Purchase Transactions are completed, SIMC intends to continue to manage an Account in accordance with the terms of the Investment Management Agreement and under the exemptive relief afforded by PTE 77–4 with respect to future purchases and sales of Fund shares as well as with respect to the receipt of fees by SEI or its affiliates in connection with such transactions. Therefore, SEI is not requesting further administrative exemptive relief from the Department with respect to such transactions after they are completed as described above.

Besides engaging in a Purchase Transaction, SEI may invest a Plan's cash assets in the Funds as a directed or discretionary fiduciary, pursuant to the terms of PTE 77–4. Under certain conditions, PTE 77–4 permits SEI to receive fees from the Funds (a) where the Plan does not pay any investment management, investment advisory or similar fees with respect to the assets of such Plan invested in shares of the Fund for the entire period of the investment; or (b) where the Plan pays investment management, investment advisory or similar fees to SEI based on the total assets of such Plans from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees.

Each individual Plan (or Plan sponsor) that retains SIMC as an investment manager pays directly to SIMC a Plan-level investment management fee covering all services of SIMC and its subsidiaries. With respect to any Plan assets invested in the Funds, SEI follows the second approach of PTE 77–4. Thus, each Plan's *pro rata* share of investment advisory fees paid to SEI by the Funds is applied as a credit against Plan-level fees.[17] Investment management fees charged with respect to the Funds vary and are described in the Fund prospectuses.

SEI's Plan-level investment management fees may also include a performance fee which is calculated and payable to it or its affiliates in accordance with advisory opinions issued by the Department to Batterymarch Financial Management (ERISA Advisory Opinion 86–20A, August 29, 1986); BDN Advisers, Inc. (ERISA Advisory Opinion 86–21A, August 29, 1986); and Alliance Capital Management Corporation (ERISA Advisory Opinion 89–28A, September 25, 1989).[18] The Fund-level fees which do not include any performance fee component, are applied as a credit against such Plan-level fees.

In addition, STC may be separately retained by the Plan (in which case it may be paid an additional Plan-level fee) as a non-discretionary trustee or custodian where it is directed to invest in the Funds by SIMC (if SIMC is the

[15] Securities of non-U.S. issuers may be traded on U.S. exchanges or the NASDAQ, directly or in the form of ADRs, or may be acquired on foreign exchanges or foreign over-the-counter markets. In the latter case, valuation will be in accordance with Representation 13(d).

[16] If STP is separately retained by a Plan as a non-discretionary trustee or a custodian, STC will take legal title to the Fund shares being acquired. Otherwise, it will have no role with respect to the Purchase Transactions and will act solely at the directions of the Second Fiduciary and/or SIMC.

[17] Fees paid to third party sub-advisers that are retained by SIMC are paid by SIMC out of its own pocket and are not deducted prior to applying the credit. Under such circumstances, SIMC credits back a ''gross'' investment advisory fee to the Plan as opposed to a ''net'' investment advisory fee.

[18] In an arrangement involving a performance fee, SEI may charge a Plan, at the Plan-level, an annualized minimum (floor) fee calculated as a fixed percentage of the Plan's assets under SEI's management and ranging from 40 to 60 basis points. Typically, the performance fee is calculated based on the Plan's return in excess of an annual hurdle rate which represents a weighted average of several generally recognized external mutual fund indices. Both the weighting and the choice of indices are negotiated between the Plan and SEI. The performance fee may represent a percentage of the excess return to the Plan, a fixed amount or ''scaled'' and have multiple hurdle rates. Thus, SEI states that there is no standard or model performance fee arrangement.

The Department expresses no opinion herein on whether SEI's performance fee arrangements comply with the advisory opinions cited above.

investment manager), by a fiduciary independent of SEI, or by Plan participants and beneficiaries pursuant to section 404(c) of the Act. As a non-discretionary trustee or custodian, STC receives no Plan-level fees for investment management or investment advisory services; its fees are strictly for non-discretionary administrative, custodial and similar services.

SEI may also receive other Fund-level fees for administrative, transfer, accounting, and other secondary services (the Secondary Services) [19] provided to such Fund or to the distributor of shares of such Funds and its affiliates. However, no such fees will be paid to SEI pursuant to a 12b–1 Plan. SEI represents that the Funds' Trustees and the shareholders of the Funds approve the compensation that SEI receives from the Funds. Also, the Funds' Trustees approve any changes in the compensation paid to SEI for services rendered to the Funds. Although currently under the Investment Management Agreement all such fees for Secondary Services are credited back to the Plans in the same manner as SEI credits back its Fund-level advisory fees, it reserves the right to retain such fees in the future in accordance with the Department's advisory opinions involving PNC Financial Corp (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993).

SEI represents that, after all of the foregoing credits are taken into account, the combined total of all Plan-level and Fund-level fees received by SEI for the provision of services to the Plans and to the Funds, respectively, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

15. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by SEI. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the Accounts and full written disclosure of information concerning the Funds as set forth in the Investment Management Agreement, including (a) a current prospectus for each Fund to which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; (f) the identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and (g) upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the grant notice.

On the basis of the information disclosed, the Second Fiduciary, by executing the Investment Management Agreement, will authorize in writing the investment of assets of the Plans in shares of the Fund in connection with the transactions set forth herein (including the transaction date proposed by SEI), the compensation received by SEI in connection with its services to the Funds, and the receipt of confirmation statements by facsimile or electronic mail. The Second Fiduciary's written authorization will extend to those investment portfolios of the Funds referenced in the Investment Management Agreement, contingent upon delivery of a prospectus to such Second Fiduciary. Having obtained the authorization of the Second Fiduciary, SEI will invest the assets of a Plan among the portfolios and in the manner provided in the Investment Management Agreement and the Strategy, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, SEI represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the ICA and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to SEI. [20]

In addition to the foregoing, SEI represents that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) SEI will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair market value, as required by Rule 17a–7. Net asset value per share for purposes of pricing purchases and redemptions is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

16. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an

[19] The term ''Secondary Service'' means a service, other than an investment management, investment advisory or similar service which is provided by SEI to the Funds, including, but not limited to custodial, accounting, administrative, brokerage or any other service.

[20] In some cases, SEI executes brokerage transactions for the investment portfolios of certain of the Funds as a Secondary Service. To the extent that SEI does not presently execute securities brokerage transactions with respect to any Fund for which an investment advisory fee is paid to SEI, but proposes to do so in the future, for any Plan that invests in the Fund (other than an SEI-sponsored Plan investing in the Fund pursuant to PTE 77–3), SEI will, at least 30 days in advance of the implementation of such additional service, provide a written notice to the Plan's Second Fiduciary which explains the nature of such additional brokerage service and the amount of the fees. Further, with respect to any Fund for which SEI does or will provide such brokerage services, SEI will provide, at least annually to each such Plan, a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to SEI by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to SEI; (c) the average brokerage commissions per share, expressed as cents per share, paid to SEI by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to SEI.

exemption under section 408(a) of the Act because:

(a) A Second Fiduciary has authorized or will authorize, in writing, a Purchase Transaction prior to its consummation after such Second Fiduciary has received or will receive full written disclosure of information concerning a Fund.

(b) Each Plan has received or will receive shares of a Fund, in connection with a Purchase Transaction, that are equal in value to the assets of the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the ICA, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the securities involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such securities and the identity of the pricing service or market maker consulted in determining the current market price of such securities.

(d) Not later than 90 days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the aggregate dollar value of the assets held by the Plan in its Account immediately before the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that has been or will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) As to each individual Plan, the combined total of all fees received by SEI for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not been or will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) No sales commissions or Rule 12b–1 Fees have been paid or will be paid by a Plan in connection with a Purchase Transaction.

(h) With respect to each Purchase Transaction, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning such Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary has authorized or will authorize, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to SEI.

(i) In accordance with the requirements of PTE 77–4 and advisory opinions issued by the Department thereunder, (1) the Plans have received or will receive a full credit against Plan-level fees of any investment management, investment advisory or similar fees to SEI with respect to any of the assets of such Plans that are or will be invested in shares of any of the Funds; and (2) SEI may retain fees for certain Secondary Services it performs on behalf of the Funds.

(j) SEI has provided or will provide ongoing disclosures to Second Fiduciaries of Plans so that such fiduciaries may, among other things, verify the fees charged by SEI to the Funds.

(k) All dealings between the Plans and any of the Funds have been or will be on a basis that is no less favorable to such Plans than dealings between the Funds and other shareholders holding shares of the same class as the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The David Mandelbaum IRA Rollover Account (the IRA), Located in West Orange, New Jersey

[Application No. D–10765]

Proposed Exemption

The Department is considering granting an exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the proposed cash sale by the IRA to the David Mandelbaum Family Trust (the Family Trust) of a 50 percent (50%) undivided interest in two (2) parcels of improved real property subject to a long term lease (the Property); provided the following conditions are satisfied:

(1) The sale is a one time transaction for cash; (2) the terms and conditions of the sale are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties; (3) the IRA receives the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (4) the fair market value of the IRA's undivided interest in the Property is determined by an independent, qualified appraiser, as of the date of the sale; and (5) the IRA does not pay any commissions, costs, finder's fees, or other expenses in connection with such sale.

Summary of Facts and Representations

1. The IRA is a self-directed individual retirement account, as described under section 408(a) of the Code.[21] David Mandelbaum is the owner of the IRA and retains discretion with respect to the investment of the assets in the IRA. As such, David Mandelbaum is a fiduciary with regard to the IRA and a disqualified person, pursuant to section 4975(e)(2)(A) of the Code. The primary beneficiaries under the terms of the IRA are David Mandelbaum's four (4) sons, and as such they are disqualified persons with respect to the IRA, pursuant to section 4975(e)(2)(F) of the Code.

The IRA was established in 1989 with the roll over distributions from the Mandelbaum & Mandelbaum, P.A. Employees Retirement Plan (the M&M Plan). As of December 31, 1998, the IRA held assets of approximately $19.6 million dollars with an estimated annual income of $777,722. The custodian of the IRA is Summit Bank (formerly Summit Trust Company) of Summit, New Jersey.

2. The M&M Plan was a tax qualified money purchase plan which was sponsored by Mandelbaum & Mandelbaum P.A. Both David Mandelbaum and his brother, Nathan Mandelbaum, were participants in the M&M Plan. The M&M Plan was terminated, effective June 30, 1983. On July 8, 1983, the M&M Plan acquired the Property which is the subject of this exemption, as a real estate investment from Frank X. Weny and Mary E. Weny, unrelated third parties. The M&M Plan was subsequently liquidated in December of 1989.

3. The Property, located in the Municipality of Wayne, Passaic County, New Jersey, consists of two parcels of improved commercial real estate which function as a single economic unit of approximately 49.48 acres. Each of the parcels is subject to a long term triple net lease totaling 99 years, consisting of an initial term that extends from December 1, 1965, through November

[21] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.

30, 2015; four (4) option periods of ten (10) years each; and a final option period of nine (9) years. Pursuant to such leases, the right to use and occupy the Property was conveyed to Westbelt Realty Associates, an unrelated third party.

The improvements on the Property consist of a shopping center, which was built in 1974 and subsequently renovated and expanded in 1989 and 1997, professional landscaping, exterior lighting, and a 38,000 space parking lot. The shopping center is an enclosed mall, commonly known as Wayne Towne Center (a/k/a the Westbelt Mall) which offers approximately 650,000 square feet of rental space to anchor tenants, such as Fortunoff's, J. C. Penney, Borders Books and Music, Loehmann's, and Old Navy. It is represented that no related party owns any interest in the buildings or improvements on the Property.

4. As a result of the liquidation of the M&M Plan in 1989, David Mandelbaum and Nathan Mandelbaum each received a lump sum in-kind distribution of an undivided interest in the ownership of the Property. In this regard, together the brothers owned 100 percent (100%) of the interests in the Property, with David and Nathan Mandelbaum receiving a distribution of a 62.4% interest and a 37.6% interest, respectively, in such Property.

5. On December 7, 1989, RMJJ Associates (RMJJ) purchased a 20 percent (20%) interest in the Property from David and Nathan Mandelbaum. RMJJ is a New Jersey partnership, the partners of which consist of four (4) trusts, each of which own a 25 percent (25%) interest in RMJJ. Each trust was established to benefit one of David Mandelbaum's four sons. From a total purchase price of $950,000 paid by RMJJ for its interest in the Property, David Mandelbaum received $589,000 and Nathan Mandelbaum received $361,000. Further, it is represented that, pursuant to section 402(c)(6) of the Code, David and Nathan Mandelbaum timely rolled over into their respective individual retirement accounts the proceeds from the sale to RMJJ and their remaining interests in the Property. Accordingly, it is represented that, as of the filing of the application for exemption, the IRA, RMJJ, and the Nathan Mandelbaum IRA, respectively, owned a 50 percent (50%), a 20 percent (20%), and a 30 percent (30%) undivided interest in the Property, as tenants in common. It is represented that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property constitutes 21.9% of the assets of such IRA.

It is represented that the sole purpose of RMJJ is to facilitate collection and proper disbursement of rents. In this regard, RMJJ collects rents from various properties owned by Mandelbaum family members, including the Property which is the subject of this exemption. It is represented that the Property has produced annual rental income averaging $1,114,212 over the past four (4) years. It is further represented that such rental income has been apportioned and distributed among the owners of the Property in accordance with each owner's interest.[22]

6. Louis S. Izenberg (Mr. Izenberg), MAI, SRPA, SRA, and Steven J. Wetstein (Mr. Wetstein), both state certified general real estate appraisers associated with Izenberg Appraisal Associates in Parsippany, New Jersey, were hired to determine the value of the leased fee interest in the Property. Mr. Izenberg and Mr. Wetstein represent that they are qualified real estate appraisers with approximately twenty (20) years and twelve (12) years of experience, respectively, and are familiar with the Property and with similar properties located in the surrounding area. In addition, Mr. Izenberg and Mr. Wetstein represent that they are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the parties involved, and are unrelated to David Mandelbaum.

Mr. Izenberg's and Mr. Wetstein's appraisal of the leased fee interest in the Property relied primarily on the income capitalization approach to establish the fair market value. Based on this analysis and their inspection of the Property, Mr. Izenberg and Mr. Wetstein concluded that the fair market value of the leased fee interest in the Property, as of May 27, 1998, was $16,565,000 dollars. It is represented that Mr. Izenberg and Mr. Wetstein will update their appraisal of the value of the leased fee interest in the Property at the time of the actual sale by the IRA of its interest in the Property to the Family Trust.

[22] The applicant maintains that if RMJJ is deemed to be a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(B) of the Code, the provision of services RMJJ renders to the IRA and to other parties would qualify for statutory exemption, pursuant to section 4975(d)(2) of the Code. In this regard, it is represented that RMJJ receives no compensation for the services rendered to the IRA and others in connection with the collection and distribution of rents. The Department is not opining, herein, whether RMJJ is a disqualified person with respect to the IRA, nor has the Department determined that the conditions, as set forth in section 4975(d)(2) of the Code, have been satisfied. Further, the Department is offering no relief for transactions other than those proposed.

7. Because Mr. Izenberg's and Mr. Wetstein's appraisal was based on the fair market value of the leased fee interest in the entire Property, Frank E. Koehl, Jr. (Mr. Koehl) ASA, a certified business valuation appraiser, and Michael F. Nelson (Mr. Nelson), a valuation analyst, both of Management Planning, Inc. (MPI) were retained to undertake a financial analysis of undivided fractional interests in the Property and to determine the fair market value of the 50 percent (50%) undivided interest in the Property owned by the IRA. In this regard, it is represented that MPI has been preparing financial analyses of closely held businesses and evaluating the securities of such businesses since 1939. Mr. Koehl and Mr. Nelson maintain they are qualified in that they, respectively have eighteen (18) years and three (3) years of experience as employees of MPI. It is represented that neither MPI nor its employees have any present or contemplated future financial interest in the Property or any other interest that might affect their performance in a disinterested manner.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property included a discount of 20 percent (20%) for lack of control. In the appraisal report Mr. Koehl and Mr. Nelson noted that a majority ownership position does not constitute control where co-tenants of an undivided interest in real property have equal rights and cannot act upon those rights without the consent of the other co-tenants. For this reason, Mr. Koehl and Mr. Nelson determined that a discount for lack of control was appropriate to the IRA's undivided ownership interest in the Property, even though Mr. Koehl and Mr. Nelson acknowledged that all of the co-tenants of the Property are members of the Mandebaum family.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property also included a discount of 35 percent (35%) for lack of marketability. In this regard, Mr. Koehl and Mr. Nelson stated in their report that a willing buyer would be aware that the Property has three owners; there is no ready market for fractional interests; and that such buyer would be buying an asset that could be sold only in a private transaction.

Based on their analysis, Mr. Koehl and Mr. Nelson concluded that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property is $4,307,000 dollars, as of December 31, 1998. In this regard, it is represented that Mr. Koehl and Mr. Nelson will update their appraisal at the time of the actual sale of the IRA's 50

percent (50%) interest in the Property to the Family Trust.[23]

8. The Family Trust is an irrevocable trust established by David Mandelbaum, as the grantor. The trustee of the Family Trust is Ronald Targan. One hundred percent (100%) of the interest of the Family Trust is held for the benefit of David Mandelbaum's grandchildren. David Mandelbaum's grandchildren, as lineal descendants of a fiduciary, are members of the family, within the meaning of section 4975(e)(6) of the Code, and disqualified persons, pursuant to section 4975(e)(2)(F) of the Code.

9. David Mandelbaum requests an exemption for the sale by the IRA of a 50 percent (50%) undivided interest in the Property to the Family Trust. In this regard, the sale by the IRA to the Family Trust would be an indirect sale by a plan to the members of a fiduciary's family, pursuant to section 4975(c)(1)(A) of the Code, and a direct transfer of a plan's assets for the benefit of such fiduciary's family, under section 4975(c)(1)(D) of the Code. Although David Mandelbaum, the fiduciary of the IRA, is not a beneficiary of the Family Trust, he has an interest in his grandchildren who are the beneficiaries of the Family Trust which may effect his best judgment as a fiduciary. Accordingly, the application describes a transaction for which relief from the prohibitions of section 4975(c)(1)(A)–(F) of the Code is requested.

10. The applicant maintains that the proposed transaction is feasible in that it involves a one-time sale of the IRA's interest in the Property in exchange for cash. In this regard, it is represented that the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with such sale. Further, David Mandelbaum shall personally bear the cost of filing the exemption application.

11. The transaction is in the interest of the IRA, in that the IRA will be able to dispose of an illiquid asset which would otherwise be difficult to sell, especially in a period of economic downturn. In this regard, the IRA will receive for its undivided interest in the Property a price equal to the greater of $4,307,000 dollars or the fair market value of the such interest, as of the date of the sale. It is represented that the Property has appreciated in value, and that the IRA will realize a gain on the sale from the purchase price to be paid by the Family Trust. Further, in selling at this time the IRA will avoid the costly annual appraisals which have been required by the IRA's trustees and custodian, as a condition of the IRA's continuing to hold the asset.

12. The transaction is structured to include certain safeguards for the protective of the participant and beneficiaries of the IRA. In this regard, the terms of the transaction will be at least as favorable as arm's length terms negotiated with unrelated parties. Further, the fair market value of the Property has been determined by independent, qualified appraisers, and such value will be updated at the time the transaction is entered. In addition, independent qualified financial analysts have issued a certified business valuation appraisal of the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, and an updated appraisal will be used at the time of the sale to determine the purchase price to be paid by the Family Trust.

13. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 4975(c)(2) of the Code because: (a) The sale by the IRA of the undivided interest in the Property to the Family Trust will be a one-time transaction for cash; (b) the terms and conditions of the sale are at least as favorable to the IRA as similar terms negotiated at arm's length with unrelated parties; (c) the IRA will receive the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (d) the fair market value of the Property and the fair market value of the IRA's undivided interest in the Property will be determined by independent, qualified appraisers, as of the date of the sale; and (e) the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with the sale.

Notice to Interested Persons

Because David Mandelbaum is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

HSBC Holdings plc, Located in London, England

[Exemption Application No.: D–10910]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24] If the exemption is granted, HSBC Asset Management Americas, Inc. (AMUS), HSBC Asset Management Hong Kong, Ltd. (AMHK), HSBC Bank USA (Bank USA), any current affiliate of HSBC Holdings plc (HSBC) that in the future becomes eligible to serve as a qualified professional asset manager, as defined in Prohibited Transaction Class Exemption 84–14 (PTCE 84–14) (QPAM),[25] HSBC, itself, if in the future it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM, other than the Bangkok Metropolitan Bank PLC (BMB), shall not be precluded from functioning as a QPAM, pursuant to the terms and conditions of PTCE 84–14, for the period beginning on June 16, 2000, and ending ten (10) years from the date the final exemption is published in the **Federal Register**, solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of an affiliation with BMB; provided that:

(a) BMB has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(b) This exemption is not applicable if HSBC and/or any successor or affiliate becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(c) This exemption is not applicable if HSBC and/or any successor or affiliate is convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

Effective Date: If granted, this proposed exemption will be effective for the period beginning on June 16, 2000, the date the application for exemption

[23] The Department notes that the appraisers have included in their calculations of the fair market value of the IRA's 50 percent (50%) interest in the Property substantial discounts for lack of control (20%) and lack of marketability (35%). In this regard, the Department states that relief from the prohibited transactions provisions of the Code provided by this exemption would not be available, if the amount received by the IRA for the sale of its interest in the Property is not equal to the *greater* of $4,307,000 dollars or the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, as determined by an independent, qualified appraiser, as of the date of the sale of such Property to the Family Trust.

[24] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[25] 49 FR 9494 (March 13, 1984), *as amended*, 50 FR 41430 (October 10, 1985).

was filed with the Department, and ending ten (10) years from the date of publication of the final exemption in the **Federal Register**.

Summary of Facts and Representations

1. HSBC, a publicly owned holding company headquartered in London, England, provides banking and financial services worldwide. The exemption is requested for affiliates of HSBC, AMUS, AMHK, and Bank USA, as well as for any current affiliate of HSBC that in the future becomes eligible to serve as a QPAM, HSBC, itself, if it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM (collectively, the Applicants), other than BMB.

It is represented that HSBC's affiliate, Bank USA, is a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law. Further, Bank USA has equity capital in excess of $1,000,000. Accordingly, the Applicants represent that Bank USA qualifies as a QPAM, pursuant to Section V (a)(1) of PTCE 84–14.

Two other HSBC affiliates, AMUS and AMHK, each are also currently qualified to serve as a QPAM.[26] In this regard, both AMUS and AMHK are investment advisers registered under the Advisers Act, and, as such, are subject to the jurisdiction of the Securities and Exchange Commission and to the substantive requirements of the Advisers Act. It is represented that AMUS has total assets under its management and control well in excess of $50,000,000. In this regard, $6.4 million, as of March 31, 2000, is attributable to three (3) accounts subject to the Act. As of March 31, 2000, AMHK had total funds under management of $13.1 billion of which $462 million was attributable to two (2) accounts subject to the Act. It is represented that consistent with the requirements of PTCE 84–14, a fiduciary independent of the Applicants (typically a named fiduciary other than a trustee) is or will be involved in the appointment of a QPAM with respect to the assets of any plan that is or will be affected by this proposed exemption.

2. The proposed exemption would apply with respect to any employee benefit plans to which the Applicants now or in the future provide investment management services, (collectively, the ERISA Plan Clients).[27] Given the changing identity of such plans, the Applicants maintain that such plans could not definitely be identified at the time the application was filed.

3. BMB is a commercial bank incorporated in Thailand. Prior to 1994, BMB maintained two agencies in the United States (the US Agencies), one in New York and one in California. In 1994, regulators in the United States identified approximately twenty (20) aspects of BMB's operations in the United States that fell short of acceptable standards. Under the terms of a written agreement dated July 29, 1994, between BMB and its regulators, BMB agreed to rectify these deficiencies. Following BMB's failure to correct such deficiencies in accordance with such agreement, BMB's license to maintain its US Agencies in the United States was revoked and its operations wound up under the terms of a Consent Order, dated July 25, 1996.

In a Joint Statement issued concurrently with the Consent Order, the Board of Governors of the Federal Reserve System, the California State Banking Department, and the New York State Banking Department concluded that BMB should no longer have a banking presence in the United States. This conclusion was based on the following: (1) Both US Agencies made loans knowing that the stated purposes of the loans were false; (2) both US Agencies made loans that were diverted from their stated purposes, sometimes to benefit insiders; (3) senior management of BMB could not satisfactorily explain the appearance of involvement in a money laundering scheme; (4) officials and employees at BMB and the US Agencies were not forthright with examiners; (5) both US Agencies had misleading books and records; (6) officers of the US Agencies admitted that BMB's home office mandated that certain transactions occur in a manner contrary to safe and sound banking practices; and (7) management at BMB and its US Agencies failed to rectify problems identified by regulators.

In addition to the Consent Order, under the terms of a plea agreement with the United States Attorney for the Southern District of New York and for the Northern District of California, BMB also pleaded guilty to four criminal offenses in relation to the activities of its US Agencies. In this regard, BMB pleaded guilty to one count of obscuring the examination of a fiscal institution in violation of 18 U.S.C. § 1517 and three (3) counts of falsifying its books, reports, and statements in violation of 18 U.S.C. 1005.

4. After the Asian economic crisis, it is represented that the Thai government took control of 99 percent (99%) of the voting shares of BMB, and subsequently, conducted an auction sale of its interests in BMB. It is represented that HSBC was the winning bidder at the auction sale and that HSBC expects to finalize its acquisition of BMB within the next several months. As of June 16, 2000, the date the application was submitted, HSBC represents that no transaction that is the subject of this proposed exemption had been consummated or is planned to be consummated. However, it is represented that the size and diversity of the operations of the Applicants make it impossible to say that a transaction requiring the requested relief will not be consummated before the final decision is made on this proposed exemption. Accordingly, the Applicants seek retroactive relief, effective June 16, 2000, from the restrictions of section 406(a)(1)(A)–(D), 406(b)(1), 406(b)(2), and 407(a) of the Act and 4975(c)(1)(A)–(E) of the Code for the subject transactions.

5. The requested exemption would apply to a full range of transactions on and after the acquisition by HSBC of BMB from the Thai government. Such transactions include, but are not limited to sale and exchange transactions, derivative transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities to an investment fund managed on a discretionary basis by the Applicants. It is represented that such transactions will be evaluated by the Applicants, consistent with their fiduciary responsibilities under the Act.[28]

[26] The Department expresses no opinion as to whether AMUS, AMHK, or Bank USA would qualify as a QPAM for purposes of PTCE 84–14.

[27] It is represented that with respect to transactions concerning employee benefit plans that cover employees of one or more of the Applicants, the Applicants will rely on Prohibited Transaction Class Exemption 96–23.

[28] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. The Department further emphasizes that it expects a manager or other plan fiduciary to fully understand

Continued

6. The Applicants represent that it would not be uncommon for one of the Applicants, as a fiduciary for one of the ERISA Plan Clients, to propose a transaction, such as those described above, that involve a party in interest, as defined under section 3(14) of the Act. The proposed exemption would apply to all current and future parties in interest with respect to the ERISA Plan Clients. Given the size and number of such ERISA Plan Clients and the large number of service providers (particularly financial institutions) that such ERISA Plan Clients engage, it is impractical for the Applicants to identify all the parties in interest that might be involved in transactions covered by the requested exemption. Accordingly, the Applicants have not attempted to do so in the application file.

7. The proposed exemption, if granted, will be subject to terms and conditions, similar to those, as set forth PTCE 84–14. PTCE 84–14, in general, permits various parties in interest with respect to an employee benefit plan to engage in certain transactions involving plan assets if, among other conditions, the assets are managed by a QPAM, who is independent and who meets specified financial standards and other conditions. One such condition, Section I(g)of PTCE 84–14, requires that neither the QPAM nor any affiliate of the QPAM were convicted of certain felonies [29] within a ten (10) year period preceding the subject transaction. Section V(d) of PTCE 84–14, defines an ''affiliate'' of a person to mean—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and (4) Any employee or officer of the person who —(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

Section V(e) of PTCE 84–14 states that the term, ''control,'' means the power to exercise a controlling influence over the management or disposition of plan assets.

8. Upon acquisition of BMB by HSBC from the Thai government, the Applicants will become affiliates of BMB, pursuant to the definition of ''affiliate,'' as set forth in Section V(d) of PTCE 84–14. Further, because BMB, in 1996, entered a plea of guilty with respect to a felony described in Section I(g) of PTCE 84–14, the Applicants, as affiliates of BMB, could not satisfy Section I(g) of PTCE 84–14. Furthermore, even though BMB's plea occurred well before HSBC acquisition of BMB, any of the Applicants which qualify as a QPAM (*e.g.,* AMUS, AMHK and Bank USA) would be precluded from acting or continuing to act as a QPAM. In order to avoid this result, the Applicants have requested the proposed exemption.

9. The Applicants maintain that the requested exemption should be granted notwithstanding the guilty plea entered by BMB. In support of their position, the Applicants state that no entity affiliated with HSBC, other than BMC, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea. In this regard, it is represented that the individuals responsible for BMB's misconduct have not been and will not be employed at any time by HSBC or any of its affiliates.

None of the acts underlying the guilty plea involved any investment management activities of BMB; nor did such acts involve any assets of plans subject to the Act. Further, all of the acts that formed the factual basis of the guilty plea occurred prior to HSBC's acquisition and control of BMB.

With regard to the future, it is represented that BMB will not influence or control the management or policies of the Applicants, nor will BMB be involved in the investment management activities relating to any ERISA Plan Clients. In this regard, BMB employees will not have any involvement in the investment management activities of the Applicants. Finally, it is represented that BMB has not in the past acted, nor does it now act, nor does it intend to act in the future as a fiduciary with respect to any employee benefit plans subject to the Act.

10. The Applicants maintain that the requested exemption will afford protection similar to that provided in PTCE 84–14. In this regard, other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to this proposed exemption. Further, it is represented that many of the Applicants' ERISA Plan Clients have significant assets, and hence are sophisticated and have access to resources necessary to monitor effectively the performance of the investment manager.

The proposed exemption also contains conditions, in addition to those imposed by PTCE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the ERISA Plan Clients against wrongdoers now and in the future. In this regard, the proposed exemption will not be applicable if any of the Applicants is convicted of or becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

11. The Applicants represent that the requested exemption is administratively feasible because the relief would not impose any administrative burdens on the Department which are not already imposed by PTCE 84–14. In the opinion of the Applicants, the administrative feasibility of the requested exemption is also demonstrated by the fact that the Department has previously granted other individual exemptions for a variety of similarly situated entities under substantially the same circumstances.[30]

12. The requested exemption would allow the Applicants' ERISA Plan Clients to enter into transactions which are in the best interest of such plans. In this regard, such plans would not be precluded from engaging in transactions with parties in interest, where the terms of such transactions are at least as favorable to such plans as those of a similar transaction with an unrelated party. Absent the proposed exemption, the Applicants would be required to examine each transaction involving

the benefits and risks associated with engaging in a specific transaction. In addition, such manager or plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment and the creditworthiness of the issuer or other party to the transaction. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[29] The term, ''felony,'' as set forth in Section I(g) of PTCE 84–14 includes: (1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; (2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; (3) income tax evasion; (4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or (5) any other crimes described in section 411 of the Act.

[30] Bankers Trust Co., BT Alex Brown, Inc., and Deutsche Bank, Prohibited Transaction Exemption 99–29, 64 FR 40623 (July 22, 1999); PanAngora Management, Inc., Prohibited Transaction Exemption 97–10, 62 FR 4813 (Jan. 31, 1997; American Express Company and Affiliates, Prohibited Transaction Exemption 94–34, 59 FR 19247 (April 22, 1994); CS Holding and its Worldwide Affiliates, Prohibited Transaction Exemption 94–31, 59 FR 17590 (April 13, 1994).

such ERISA Plan Clients to determine parties in interest, no matter how remote, with respect to such plans.

13. Denial of the exemption, in the opinion of the Applicants, would be unduly and disproportionately severe and would have adverse consequences for the ongoing business operation of the Applicants. Disqualification from serving or continuing to serve as a QPAM would deprive the Applicants of their ability to render diversified investment advisory services to their ERISA Plan Clients. Further, the unavailability of the exemption would work a hardship on the ERISA Plan Clients which the Applicants serve. In this regard, such ERISA Plan Clients might be forced to forgo certain attractive investment opportunities or beneficial transactions that involve parties in interest for which no existing class exemptions apply. Finally, the ERISA Plan Clients would have to incur higher transaction costs and risks on other investments by limiting the number of parties that might engage in transactions with such plans and by limiting the number of high-credit quality counter-parties available in principal transactions.

14. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) no entity affiliated with HSBC, other than BMB, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea;

(b) all of the acts that formed the factual basis of the guilty plea occurred before the date that HSBC acquired control of BMB;

(c) the individuals responsible for BMB misconduct have not been and will not be employed at any time by HSBC or any other affiliates;

(d) absent the proposed exemption, the ERISA Plan Clients may have to forgo attractive investment opportunities or incur higher transaction costs and risks;

(e) AMUS and AMHK, as investment advisors registered under the Advisers Act, are subject to the jurisdiction of the Securities and Exchange Commission and the requirements of the Advisers Act;

(f) Bank USA is a bank, as defined in section 202(a)(2) of the Advisers Act), and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law;

(g) BMB has not in the past acted, nor does it now act, nor will it act in the future as a fiduciary with respect to any employee benefit plans subject to the Act;

(h) BMB will not be involved in investment management activities relating to the ERISA Plan Clients, nor will BMB influence or control the management or policies of HBSC;

(i) other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to the transactions covered by this exemption;

(j) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(k) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes convicted of any of the crimes described in Section I(g) of PTCE 84–14, including such crimes subsequently committed by BMB.

Notice to Interested Persons

The Applicants will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2), to the trustee or other fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

The Notice and the Supplemental Statement will be delivered by hand delivery or first class mail, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register**.

A copy of the final exemption, if granted, will also be provided to the trustee or fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department telephone (202) 219–8883. (This is not a toll-free number.)

Pembroke Construction Company, Inc. Employees 401(k) Profit Sharing Plan (the Plan), Located in Hampton, Virginia

[Application No. D–10915]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a condominium (the Condo) by Thomas N. Hunnicutt (Mr. Hunnicutt), and his wife Ann N. Hunnicutt (collectively, the Hunnicutts), to Mr. Hunnicutt's self-directed individual account (the Account) in the Plan, with respect to which the Hunnicutts are parties in interest; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Account will pay the current fair market value for the Condo, as established at the time of the purchase by an independent qualified appraiser;

(c) the Account will pay no expenses or commissions associated with the purchase; and

(d) the purchase will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income.

Summary of Facts and Representations

1. The Plan was established on May 10, 1977, and was amended and restated effective January 1, 1992. As of June 30, 1999, the Plan had 72 participants. As of June 30, 1999, the Plan had $4,899,548 in total assets, and the Account had $2,272,573 in total assets. Pembroke Construction Company, Inc. (PCC) is the sponsor of the Plan. The Hunnicutts are trustees of the Plan as well as employees, officers and directors of PCC. PCC was established on September 12, 1961, and is a subchapter ''S'' corporation in the Commonwealth of Virginia. PCC is in the business of residential and commercial construction.

2. On or about March 9, 1987, the Hunnicutts purchased the Condo from Busch Properties, for $140,000 in cash and credit (*i.e.*, the Condo is encumbered by an existing mortgage). However, the applicant states that when the Condo will be transferred to the Account, such mortgage will be paid off and the Account will own the Condo free and clear of any debt. It is represented that the Hunnicutts have not rented or leased the Condo to anyone. The Hunnicutts currently use the Condo for business purposes, such as for overnight guests. As noted below in paragraph 4, the Condo will only be leased to, and used by, independent third parties after it is sold to the

Account. Thus, the Condo will not be used by the Hunnicutts after the purchase by the Account.[31] The applicant represents that the Condo is not adjacent to any other property owned by the Hunnicutts.

3. The Property, located at 314 Padgetts Ordinary, Williamsburg, Virginia, was appraised on January 27, 2000 (the Appraisal). The Appraisal was prepared by R. Epes McMurran, Jr., SRA (Mr. McMurran), who is an independent Virginia state certified appraiser. Mr. McMurran is employed with Barker and Associates, Inc., a real estate firm located in Newport News, Virginia. In the Appraisal, Mr. McMurran states that the Condo consists of 1,686 square feet and contains, among other things, three bedrooms and three baths. The common elements include a storage area, swimming pool, tennis courts, and clubhouse. Mr. McMurran represents in the Appraisal that the monthly home owners association unit charge for the Condo is $237 (the Condo Fee). Mr. McMurran states further that the Condo has been well maintained, has received periodic maintenance, and is in readily marketable condition. Mr. McMurran relied primarily on the sales comparison approach to value the Condo. Based on an analysis of recent sales of similar properties in the local real estate area, Mr. McMurran determined that the fair market value of the Property was $285,000, as of January 27, 2000.

4. The applicant maintains that after the Account acquires the Condo, the Condo will be leased to independent third parties only. The applicant represents that the Condo could yield annual rental income for the Account in the range of $80,000 to $85,000. In this regard, the applicant submitted a statement dated November 30, 1999, from Barbara Eddins (Ms. Eddins), Rental Property Manager of Kingsmill Resort, located in Williamsburg, Virginia. Ms. Eddins states that possible rental revenue income for 3 bedroom condominiums in the Padgett's Ordinary area of Kingsmill Resort may be in the range of $80,000 to $85,000 during any calendar year. The applicant also represents that after the transaction is consummated, the Account will pay the monthly Condo Fee for the Condo.

5. The applicant now proposes that the Account purchase the Condo from the Hunnicutts in a one-time cash transaction. After the proposed purchase, the Condo will represent approximately 14% of the Account's total assets. The applicant represents that the proposed transaction would be in the best interest and protective of the Account and the Plan because the Account and the Plan will pay no expenses or commissions associated with the purchase. The Account will pay the Hunnicutts the current fair market value of the Condo, as determined by an independent qualified appraiser at the time of the transaction.

The acquisition of the Condo by the Account will diversify the Account's portfolio, and will enable the Account to realize an annual return of approximately 28 percent (28%) if the Condo can be fully leased throughout the year.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed purchase of the Condo by the Account will be a one-time cash transaction;

(b) The Account will pay the Hunnicutts the current fair market value for the Condo, as established at the time of the transaction by an independent qualified appraiser;

(c) The Condo will represent approximately 14% of the Account's total assets at the time of the transaction;

(d) The transaction will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income; and

(e) Mr. Hunnicutt is the only participant in the Plan that will be affected by this transaction, and he desires that the transaction be consummated.

Notice to Interested Persons

Because Mr. Hunnicutt is the only participant in the Plan that will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of October, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–26028 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–29–P

[31] The Department notes that this proposed exemption would not permit any leasing of the Condo to, or use of the condo by, a party in interest with respect to the Plan (*e.g.*, employees of PCC).

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, October 19, 2000, and Friday, October

20, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. to October 19, and at 9 a.m. on October 20.

Topics for discussion include: Issues in risk-adjusting payments to Medicare+Choice plans; Medicare MSAs; meeting Medicare+Choice program goals; proposed work plan for regulatory burden study; post-surgical recovery care centers; developing input price indexes for all health care settings; ESRD payment issues; issues in post-acute care, including case-mix changes in skilled nursing facilities, payment policy for speciality psychiatric facilities, and the feasibility of developing clinical indicators for evaluating use; and options to reduce beneficiary coinsurance for hospital outpatient department services.

Agendas will be mailed on October 11, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–25985 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting, in teleconference format, for NCD's Youth Advisory Committee. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

Youth Advisory Committee: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Date: November 15, 2000, 4 p.m.–5 p.m. EST.

Location: 1331 F Street, NW., Suite 1050, Washington, DC.

For Youth Advisory Committee Information Contact: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's diversity and representing a variety of disabling conditions from across the United States.

Open Meeting: This advisory committee meeting, in teleconference format, of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Those interested in joining the meeting should contact the appropriate staff member listed above. Space is limited.

Records will be kept of all Youth Advisory Committee meetings calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on October 5, 2000.

Jeffrey T. Rosen,

General Counsel and Director of Policy.

[FR Doc. 00–26035 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32990; License No. 47–25225–01; EA–00–118]

In the Matter of Bass Energy, Inc. Bruceton Mills, West Virginia 26525; Order Imposing Civil Monetary Penalty

I

Bass Energy, Inc. (Licensee) is the previous holder of Materials License No. 47–25225–01 originally issued by the Nuclear Regulatory Commission (NRC) on December 15, 1992, and amended on September 2, 1998. The License has subsequently been transferred to another entity. The license authorized Bass Energy, Inc. to possess and use sealed sources registered pursuant to 10 CFR 32.210 or an equivalent Agreement State regulation and contained in a Scan Technologies Model 3500 fixed gauging device.

II

An investigation of the Licensee's activities was initiated by the NRC Office of Investigations (OI) on November 3, 1999, and an NRC inspection conducted on September 28, 1999. The results of the investigation and inspection revealed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 30, 2000. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

To date, the Licensee has not responded to the Notice or paid the civil penalty. Additionally, telephone calls were initiated on August 16,18, 25 and 30, and September 1, 2000 by Mr. Mark Lesser, Acting Deputy Director, Division of Nuclear Materials Safety, NRC, Region II, to Mr. Thomas, President of Bass Energy, Inc., and his attorney concerning Bass Energy's intent to respond to the Notice or pay the civil penalty. Mr. Thomas has declined to discuss the matter and his attorney has not returned Mr. Lesser's calls.

III

After consideration of the Licensee's failure to respond to the Notice and pay the proposed civil penalty, the NRC staff has determined, that the civil penalty in the amount of $8,800 for the violations described in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, 10 CFR 2.201 and 10 CFR 2.205, *It Is Hereby Ordered That:*

(A) The Licensee pay a civil penalty in the amount of $8,800 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, and

(B) The Licensee respond in writing to the Notice pursuant to the provisions of 10 CFR 2.201 within 30 days of the date of this Order addressing: (1) Admission or denial of the alleged violations, (2) the reasons for the violations if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. This response shall also be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, U.S. Nuclear Regulatory Commission, 61 Forsyth St., SW, Suite 23T85, Atlanta, GA 30303.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Part I of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 29th day of September 2000.

R. William Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–26009 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consideration of License Amendment Request for the Nuclear Fuels Services, Inc., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact and Opportunity to Request a Hearing on Amendment of Materials License SNM–124, Nuclear Fuel Services, Inc.

SUMMARY: The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 at the Nuclear Fuel Services, Inc. facility located in Erwin, TN.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the amendment request from Nuclear Fuel Services, Inc. (NFS) to change liquid effluent action levels and reporting commitments in Materials License SNM–124 in accordance with 10 CFR 20.1302. This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) and NRC regulations (10 CFR Part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The NFS facility in Erwin, TN is authorized under SNM–124 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility produces nuclear fuel for the U.S. Naval Reactor Program. The principle operations include: (1) the processing of highly enriched uranium [greater than 90 weight percent ^{235}U] into a classified fuel product; and (2) the processing of scrap materials containing highly enriched uranium (HEU) to recover uranium.

1.2 Review Scope

In accordance with 10 CFR Part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302. Currently, NFS uses 20.1302(b)(2) to demonstrate compliance. NFS proposes to use 20.1302(b)(1) to demonstrate compliance.

1.4 Need for Proposed Action

Licensees are required to comply with the annual dose limits in 10 CFR 20.1301. The applicable dose limit in 20.1301(a)(1) states that the licensee shall conduct operations so that the total effective dose equivalent (TEDE) to individual members of the public from the license operation does not exceed 100 mrem in a year, exclusive of dose contribution from background radiation, from medical procedures, or from the licensee's disposal of radioactive material into sanitary sewerage. In accordance with 10 CFR 20.1302, compliance can be demonstrated by either of two ways: (1) the licensee can demonstrate, by measurement or calculation, that the TEDE to the individual likely to receive the highest dose from the licensed operation does not exceed the annual dose limit; or (2) the licensee may show that the annual average concentrations of radioactive material released in the gaseous and liquid effluents at the boundary of the restricted area do not exceed values specified in Table 2, ''Effluent Concentrations,'' of Appendix B to 10 CFR Part 20 in conjunction with other measurements.

Amending the NFS license to allow effluent discharge compliance to be reported as dose provides the licensee with the flexibility to continue operating the Waste Water Treatment Facility (WWTF) in case a sample is suspect and needs to be re-analyzed. NFS has previously demonstrated compliance with the annual dose limit in 10 CFR 20.1301 for releases to the Nolichucky River from the WWTF by

meeting the concentration values in 10 CFR Part 20, Appendix B, Table 2. If a sample was suspected of exceeding the values in 10 CFR Part 20, the WWTF shut down until the sample was re-analyzed. NFS proposes to ensure compliance by demonstrating, through calculation, that the annual TEDE from liquid effluents will remain below 10 mrem to the maximally exposed off-site receptor.

1.5 Alternatives

The alternatives available to the NRC are:

Alternative 1—Deny the amendment request (no action alternative); or Alternative 2—Approve the license amendment request as submitted.

2.0 Affected Environment

The affected environment for Alternative 1 and Alternative 2 would be the NFS site, the Nolichucky River, and the near downstream area of the river. A full description of the affected area and its characteristics is given in the 1999 Environmental Assessment for the Renewal of the NRC license for NFS.

3.0 Effluent Releases and Monitoring

Effluents from the NFS facility include discharges of sanitary wastes to the City of Erwin sanitary sewer, effluents to air, and liquid effluents to Banner Spring Branch, Martin Creek, and the Nolichucky River. A full description of the NFS Environmental Monitoring Program is given in the 1999 Environmental Assessment for Renewal.

Alternative 1

The WWTF treats liquid effluents generated by the various site operations, including fuel production, low-enriched and high-enriched uranium recovery, mixed-waste treatment, laboratory operations, laundry, building decommissioning, and site remediation. These liquid waste streams are pH adjusted and ammonia is removed by a stripping tower or by breakpoint chlorination, as appropriate. Waste water is treated by lime precipitation to remove fluoride, uranium, and other metals. After the lime is precipitated, the waste water is filtered, neutralized, and discharged into the Nolichucky River through outfall 001, under the National Pollutant Discharge Elimination System (NPDES) permit. The precipitate is dewatered in a filter press, and the filter press cake is packaged for off-site disposal at a low-level waste disposal facility.

During operation of the WWTF, each batch is analyzed for gross alpha and gross beta radioactivity prior to discharge. Also, a monthly composite sample is analyzed for isotopes of uranium. The monthly composite is analyzed for other radionuclides if materials, in addition to uranium, are suspected to be present in process waste water at levels exceeding 10% of the concentration values in Appendix B, Table 2, Column 2, 10 CFR Part 20. The chemical parameters prescribed in the State of Tennessee NPDES permit are also analyzed at the frequency specified in the permit. Samples of the treated waste water are collected from the final neutralization or storage tank prior to discharge.

If an action level is exceeded, the following actions occur: (1) The Environmental Protection Function Manager and the responsible process engineering control personnel are notified, (2) an investigation is undertaken to identify the cause of the exceedance, and (3) appropriate corrective actions are initiated to reduce observed levels that are above the action levels, and to minimize the likelihood of a recurrence. No discharge is authorized by the NFS Environmental Protection Function Manager that would result in a 12 month average concentration exceeding the applicable level specified in 10 CFR Part 20, Appendix B, Table 2, Column 2. Corrective actions are documented. If necessary, the Environmental Protection Function manager may order processing activities in an area to be halted until appropriate corrective actions are implemented.

Alternative 2

Each calender quarter, WWTF liquid effluent data will be compiled and used to calculate the maximum concentration of radioactive materials at the location of the maximally exposed off-site receptor and the dose (TEDE) to the maximally exposed off-site receptor due to discharge of WWTF liquid effluents. This quarterly assessment will typically be completed within 60 days of receiving all sample results necessary to perform the assessment. If any sample results are pending, a preliminary assessment may be performed if necessary to meet the semi-annual reporting condition.

If the resulting TEDE to the maximally exposed off-site receptor exceeds 2.5 mrem/quarter, appropriate corrective action will be identified and implemented to reduce future dose levels. Each calender quarter, the dose for the four previous (consecutive) quarters will be calculated. If the calculated TEDE to any member of the public for this four quarter period exceeds the 10 mrem per year action level, NFS will implement corrective actions and the NRC will be notified of the event, in writing, within 30 days.

Assessment of the maximum concentration and TEDE to the maximally exposed off-site receptor will be performed using: (1) National Council on Radiation Protection and Measurements (NCRP) Report No. 123, ''Screening Models for Releases of Radionuclides to Atmosphere, Surface Water, and Ground,'' or (2) pathway analysis models that consider all exposure pathways and accurately reflect site conditions and simulate exposure to members of the public. Site-specific characteristics of the surface waters receiving liquid effluents will be accurately assessed. NFS will follow written procedures to perform these calculations. Parameter values will be based on information contained in NCRP Report No. 123, data collected during the assessment period, publicly available information (*e.g.,* stream flow data compiled by the U.S. Geological Survey), previous monitoring history, or the professional judgement of the NFS Environmental Protection Function Manager.

In accordance with 10 CFR 70.59, NFS is required to submit a semi-annual effluent report. If the semi-annual average activity concentration for WWTF effluents exceed concentrations listed in 10 CFR Part 20, Appendix B, Table 2, Column 2, results of an assessment of the TEDE to the maximally exposed off-site receptor from these effluents will be included in the semi-annual effluent report to the NRC.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Public Health

Alternative 1

The impacts of normal operation are provided in the 1999 Environmental Assessment for the Renewal of the NRC license for NFS. The analysis assumes that an individual along the Nolichucky River and the surrounding population out to a distance of 50 miles uses this potentially contaminated water. Liquid-release exposure pathways include ingestion of drinking water, fish, and irrigated crops and external exposure during recreational activities. The total effective dose estimate (TEDE) for the maximally exposed individual was estimated as 0.10 mrem/yr from liquid releases.

Alternative 2

NFS is proposing a maximum TEDE of 10 mrem/yr for liquid releases. This is 10% of the 10 CFR Part 20 limit of 100 mrem/yr from all pathways. NFS'

commitment to a 10 mrem action level will provide reasonable assurance that the facility will continue to operate within the regulatory limits.

4.2 Occupational Health

Alternative 1 and Alternative 2

The dose to the workers at the NFS site has been analyzed in the Safety Evaluation Report for the Renewal, dated July 2, 1999. This dose will not increase as a result of Alternative 2 because there will be no changes to the treatment process. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment.

4.3 Water Resources and Biota

Alternative 1 and Alternative 2

Liquid effluents are released directly or indirectly into the Nolichucky River. Small creeks receiving portions of the liquid discharge, Banner Spring Branch and Martin Creek, are not used as a drinking water supply for area residents. The nearest drinking water intake on the Nolichucky River is 8 miles downstream from the NFS outfall (NFS, 1996). Since the amount of radioactivity entering Banner Spring Branch, Martin Creek and the Nolichucky River does not exceed the allowable limits in 10 CFR Part 20 for either alternative, there will be no significant impact on water quality or biota. NFS will continue to meet the requirements for effluent discharge in their NPDES permit.

4.4 Geology, Soils, Air Quality, Demography, Cultural and Historic Resources

Alternative 1 and Alternative 2

The NRC staff has determined that the neither alternative will impact geology, soils, air quality, demography, or cultural or historic resources at or near the NFS site. A full description of these parameters is given in the 1999 Environmental Assessment for Renewal.

4.5 Alternatives

The action that the NRC is considering is approval of an amendment request to a Materials license issued pursuant to 10 CFR Part 70. The proposed action is to amend NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302. The alternatives available to the NRC are:

1. Deny the amendment request; or
2. Approve the license amendment request as submitted.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are minimal. Although the TEDE might increase from 0.010 mrem to 10 mrem for the liquid release pathway, there is reasonable assurance that the 10 CFR 20.1301 dose limit of 100 mrem/yr from all pathways will not be exceeded. The staff considers that Alternative 2 is the appropriate alternative for selection and recommends approval of the license amendment.

5.0 Agencies and Persons Contacted

The NRC contacted a representative from the State of Tennessee, Department of Health in correspondence dated August 10, 2000. The State had no comments.

6.0 References

Nuclear Fuel Services, Inc., December, 1999, ''Environmental Report for Renewal of Special Nuclear Material License No. SNM–124.''

U.S. Nuclear Regulatory Commission (NRC), January, 1999, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–124.''

U.S. Nuclear Regulatory Commission (NRC), July 2, 1999, ''Safety Evaluation Report for the Renewal of Special Nuclear Material License SNM–124 for Nuclear Fuel Services, Inc.''

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of amending NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302, and have determined that the approval of this request will have no significant effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on federal workdays.

Opportunity for a Hearing

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–124. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Nuclear Fuel Services ; and
2. The NRC staff, by delivering it to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail,

addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Mary Adams. Ms. Adams may be contacted at (301) 415–7249 or by e-mail at mta@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 4th day of October, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–26010 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal issues. This includes facilities covered under 10 CFR Parts 61 and the proposed Part 63 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW* and is updated as changes are made. During an ACNW meeting there may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official at least five days prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) In addition to the ACRS/ACNW Internet web site, information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACNW meeting presentations and discussions, questions may be asked only by ACNW members, Committee consultants, NRC staff, and the ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be made available to the public through the NRC's Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained from the PDR upon payment of appropriate reproduction charges. ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

(g) Videoteleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m., Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

ACNW Working Group Meetings

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When

Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 4, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–26006 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act. These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with the Federal Advisory Committee Act; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW* and is updated as changes are made. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official at least five days prior to a meeting to allow time for reproduction and distribution. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the presentations and discussions at ACRS meetings, questions may be asked only by ACRS members, ACRS consultants and staff, and the NRC staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be made available to the public through the NRC's Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained from the PDR upon payment of appropriate reproduction charges. ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on

the Internet at *http://www.nrc.gov/ACRSACNW.*

(g) Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

ACRS Subcommittee meetings will also be conducted in accordance with the above procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 4, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–26007 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Recertification Performance Review Boards for the Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Recertification Performance Review Boards for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Recertification Performance Review Boards.

The following individuals are appointed as members of the NRC Recertification Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on recertification for Senior Executives:

Appointees

Patricia G. Norry, Deputy Executive Director for Management Services, Chair

Ellis Merschoff, Regional Administrator, Region IV

Stephen G. Burns, Deputy General Counsel

The following individuals are appointed as members of the NRC Recertification PRB Panel responsible for making recommendations to the appointing and awarding authorities on recertification of Recertification PRB members:

Appointees

Jesse L. Funches, Chief Financial Officer, Chair

Frank Miraglia, Deputy Executive Director for Reactor Programs

Dennis Rathbun, Director, Office of Congressional Affairs

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–7530.

Dated at Rockville, Maryland, this 29th day of September, 2000.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board

[FR Doc. 00–26008 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

The Presidio of San Francisco, California; Amendment of Notice of Intent and Extension of the Public Comment Period for the Presidio Trust Implementation Plan Supplemental Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Amendment of initial Notice of Intent to conduct public scoping and prepare a Supplemental Environmental Impact Statement and extension of scoping period.

SUMMARY: The Presidio Trust (Trust) is amending its Notice of Intent published on June 30, 2000 (65 FR 40707) to add a third public scoping meeting and make factual corrections. The Trust is also extending the previously announced scoping period from November 15, 2000 to December 8, 2000 to provide additional time for the public to make views known regarding the Presidio Trust Implementation Plan (PTIP) Environmental Impact Statement (EIS). The PTIP EIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio.

SUPPLEMENTARY INFORMATION: On June 30, 2000, the Trust announced its intention to prepare a Supplemental EIS for PTIP and to hold two public scoping meetings to determine the scope of impact topics and alternatives to be addressed in the Supplemental EIS (first NOI; 65 FR 40707–08). The first public workshop on July 12, 2000 addressed scoping issues and solicited public comment regarding the range of issues, alternatives, and specific impacts to be evaluated in the Supplemental EIS. A second workshop, not originally planned but widely announced through a variety of media and held on September 13, 2000, solicited comments on financial planning concepts that will help shape the alternatives to be evaluated in the EIS. A third workshop, previously planned for October 11, 2000 and now rescheduled for November 15, 2000 will present conceptual alternatives to be addressed in the EIS and visions for the Presidio's future. The extension of the scoping period until December 8, 2000 will enable the public to review and comment on the

alternatives prior to their being analyzed in the EIS.

In addition to schedule changes, the first NOI stated an intent to prepare an ''amendment'' to the 1994 GMPA. Due to the term ''amendment'' causing public confusion, the Trust is clarifying that the comprehensive plan to be prepared and analyzed through the Supplemental EIS will update the 1994 GMPA for Area B (the area of the Presidio under the Trust's jurisdiction) and be adopted by the Trust Board of Directors as the governing comprehensive plan for Area B. It will retain many elements of the 1994 GMPA, but will update others that have been affected by changes since the GMPA was finalized. The GMPA will remain the governing plan for Area A of the Presidio under the jurisdiction of the U.S. Department of the Interior, National Park Service (NPS).

PUBLIC MEETING: The Trust will solicit public comments on the conceptual alternatives proposed for analysis in the EIS and on visions for Area B of the Presidio at the third of three public scoping workshops on Wednesday, November 15, 2000 from 6 to 9 p.m. at the Log Cabin (Building 1299), Fort Scott at the Presidio.

ADDRESSES: Written comments concerning the content of the plan and the scope of the Supplemental EIS should be sent by December 8, 2000 to John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: ptip@presidiotrust.gov.

FOR FURTHER INFORMATION: Contact: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Reference: 40 CFR 1508.22.

Dated: October 4, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–26004 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–4R–P

PRESIDIO TRUST

Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California.

AGENCY: The Presidio Trust.

ACTION: Public notice.

SUMMARY: This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Bay Area Cellular Telephone Company, Sprint PCS, for colocation at an existing wireless telecommunications facilities site (''the project'') in the Presidio of San Francisco. The proposed location of the project is in the parking area located directly below the Doyle Drive overpass in the vicinity of the intersection of Halleck and Vallejo Streets.

The project involves (i) replacing a single existing utility pole (installed by Cellular One) with a taller, slightly broader pole to accommodate three additional antenna panels, and (ii) placing the associated radio equipment within a nearby building. The utility pole will be approximately 65 feet tall, 15 feet taller than the existing Cellular One pole. Power for the project will be provided through underground coaxial cables connected to existing power sources. Connection to telephone lines will be through existing telephone lines.

COMMENTS: Comments on the proposed project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, and be received by November 13, 2000. A copy of Sprint PCS's application is available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Email: ddanz@presidiotrust.gov. Telephone: 415–561–5300.

Dated: October 4, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–26005 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17f–6; SEC File No. 270–392; OMB Control No. 3235–0447.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.[1]

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act (''CEA'') and that are not affiliated with the fund. The rule requires that a written contract containing the following provisions govern the manner in which the FCM maintains a fund's assets:

- The PCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules under that statute [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7];
- If the FCM places the fund's margin with another entity for clearing purposes the FCM must obtain an acknowledgement from the clearing organization that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA; and
- Upon request the FCM must furnish records about the fund's assets to the Commission or its staff.

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. For example, the requirement that FCMs comply with the segregation or secured amount requirements of the CEA and the rules under the statue is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgement from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

[1] See Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

The Commission estimates that approximately 3,031 funds could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. The Commission further estimates that each fund uses and deposits margin with 3 different FCMs in connection with its commodity transactions. Approximately 211 FCMs are eligible to hold investment company margin under the rule.[2]

The only paperwork burden of the rule consists of meeting the rule's contract requirements. The Commission estimates that 3,031 funds will spend an average of 1 hour complying with the contract requirements of the rule (*e.g.,* signing contracts with additional FCMs), for a total of 3,031 burden hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. Although the rule requires that the FCM provide certain records upon request, these records are not made public. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment must be submitted to OMB within 30 days after this notice.

Dated: October 2, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–26030 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Citizens First Financial Corp., Common Stock, $0.01 Par Value) File No. 1–14274

October 4, 2000.

Citizens First Financial Corp., a Delaware corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). On October 2, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on October 2, 2000. The Company believes that trading in the Nasdaq marketplace will improve the liquidity of its Security by increasing its exposure among investors.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under section 12(g) of the Act.[3]

Any interested person may, on or before October 26, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–26031 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24676; 812–11924]

Hartford Capital Appreciation HLS Fund Inc., et al.

October 3, 2000.

AGENCY: U.S. Securities & Exchange Commission (''Commission'').

ACTION: Notice of application for an order of exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2b(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Applicants seek an order pursuant to section 6(c) of the Investment Company Act of 1940, as amended (the ''Act'') exempting each life insurance company separate account supporting variable life insurance contracts (and its insurance company depositor) that may invest in shares of an Existing Fund or a ''Future Fund,'' as defined below, from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit such separate accounts (''VLI accounts'') to hold shares of any Existing Fund or Future Fund when the following other types of investors also hold shares that Existing Fund or Future Fund: (1) A VLI account of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI account, (2) an Existing Fund's or Future Fund's investment adviser (representing seed money investments in the Existing Fund or Future Fund), (3) a life insurance company separate account supporting variable annuity contracts (a ''VA account''), and/or (4) a qualified pension or retirement plan (a ''Plan'' or ''Qualified Plan''), as defined below.

Applicants: Hartford Capital Appreciation HLS Fund, Inc., Hartford Dividend and Growth HLS Fund, Inc., Hartford Series Fund, Inc., Hartford Index HLS Fund, Inc., Hartford International Opportunities HLS Fund,

Inc., Hartford MidCap HLS Fund, Inc., Hartford Small Company HLS Fund, Inc., Hartford Stock HLS Fund, Inc., Hartford Advisers HLS Fund, Inc., Hartford International Advisers HLS Fund, Inc., Hartford Bond HLS Fund, Inc., Hartford Mortgage Securities HLS Fund, Inc. and Hartford Money Market HLS Fund, Inc. (each, an ''Existing Fund'' and collectively, the ''Existing Funds'') and HL Investment Advisors, L.L.C. ''HL Advisors'').

Relevant Section of the Act: Exemption requested under section 6(c) of the Act from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Filing Dates: the application was filed on December 22, 1999, and amended and restated on March 27, 2000, and August 24, 2000.

Hearing and Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Existing Funds or HL Advisors with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2000, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Hartford Investment Management Company, 55 Farmington Avenue, 11th Floor, Hartford, Connecticut 06105, Attention: Kevin J. Carr, Esq.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. As used herein, a Future Fund is any investment company (or investment porfolio or series thereof), other than an Existing Fund, designed to be sold to VLI accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment sub-advisers, investment managers, administrators, principal underwriters or sponsors. As used herein, Plan or qualified Plan means any trust, plan, account, contract or annuity described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), 501(c)(18) of the Internal Revenue Code of 1986, as amended (the ''Code'')), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii).

2. Each Existing Fund, except the Global Leaders Fund, Growth and Income Fund and High Yield Fund, is a Maryland corporation which is registered under the Act as an open-end management investment company. Each of the Global Leaders Fund, Growth and Income Fund and High Yield Fund is a diversified series of Hartford Series Fund, Inc., a Maryland corporation, which is a series fund registered under the Act. HL Advisors, a Connecticut corporation, is the investment adviser for each of the Existing Funds and is registered as an investment adviser under the Investment Advisers Act of 1940. Hartford Securities Distribution Company, Inc., a Connecticut corporation, serves as distributor of the Existing Funds.

3. The Existing Funds and Future Funds may offer their shares to VLI accounts and VA accounts (''Participating Separate Accounts'') of various life insurance companies (''Participating Insurance Companies'') to serve as an investment medium to support variable life insurance contracts and variable annuity contracts (together, ''Variable Contracts'') issued through such accounts. Each VLI acocunt and VA account will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the Company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the Participating Insurance Company may conduct. The income, gains and losses, realized or unrealized from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the Participating Insurance Company. If a VLI account or VA account is registered as an investment company, it will be a ''separate account'' as by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes such a registered VLI account or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

4. The Existing Funds and Future Funds will only sell their shares to registered VLI accounts and registered VA accounts if each Participating Insurance Company sponsoring such a VLI account or VA account enters into a participation agreement with the Fund. The participation agreements will define the relationship between each Existing or Future Fund and each Participating Insurance Company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the participating insurance company will remain responsible for establishing and maintaining any VLI account or VA account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts. The participation agreements also will memorialize, among other matters, the fact that, with regard to compliance with federal securities laws, unless the agreement specifically states otherwise, the Existing or Future Fund's obligations relate solely to offering and selling its shares to VLI accounts and VA accounts covered.

5. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI accounts and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as ''mixed funding.'' The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts and/or VA accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as ''shared funding.''

6. Applicants propose that each Existing Fund and any Future Fund may offer and sell its shares directly to Qualified Plans. Changes in the federal tax law have created the opportunity for each Existing Fund and any Future Fund to substantially increase its net assets by selling shares to Qualified Plans. Most of the plans will be pension

or retirement plans intended to qualify under sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The plans that qualify under sections 401(a) and 501(a) will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 (''ERISA'') applicable to either defined benefit or to defined contribution profit-sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' These plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement. Existing Fund and any Future Fund shares sold to such Qualified Plans would be held by the Trustees of said Plans as required by section 403(a) of ERISA. As noted elsewhere in this Application, pass through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA.

7. More particularly, section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Existing Funds. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 3, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

8. As a result of this exception to the general diversification requirement, qualified pension and retirement plans may select the Existing Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance or annuities, respectively. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts and Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from section 9(a) of the Act, the Rule 6e–2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) of the Act to the extent those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered VLI account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis supplied), and then, only where *scheduled* premium variable life insurance contracts are issued through such VLI accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VA account of the same insurance company or any other insurance company. Likewise, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VLI account of the same insurance company or any other insurance company that issues flexible premium variable life insurance contracts.

3. In addition, the relief granted by Rule 6e–2(b)(15) under the Act is not available with respect to a scheduled premium VLI account that owns shares of an underlying management company that also offers its shares to VLI or VA accounts funding Variable Contracts of one or more unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to VA accounts of the life insurer or of an affiliated life insurance company'' (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium VLI account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium VLI account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. Also, Rule 6e–3(T) does not contemplate extended mixed and shared funding.

5. Applicants maintain, as discussed below, that there is no policy reason for the sale of Existing Fund and Future Fund shares to Qualified Plans to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered *exclusively* to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Existing Funds and Future Funds to be sold to Qualified Plans while allowing Participating Insurance Companies and their Participating Separate Accounts to enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants note that if the Existing Funds and Future Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a qualified pension and retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Existing Funds and Future Funds may also sell their shares to qualified pension and retirement plans. Rather, Applicants assert that the proposed sale of shares of the Existing Funds and Future Funds to Qualified Plans, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

8. Applicants recognize that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting Qualified Plans to invest in the Existing Funds or Future Funds. Applicants have concluded that the addition of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. (See ''Lack of Conflicts—Qualified Plans,'' below.) Even if a material irreconcilable conflict involving Qualified Plans arose, the trustees of (or participants in) the Qualified Plans could simply redeem their shares and make alternative investments.

9. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds as well as their principal underwriters that currently invest or in the future will invest in the Existing Funds and Future Funds.

10. There is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the Act's provisions, including class exemptions in the context of mixed and shared funding. Such class exemptions have included, among other things, exemptions permitting the sale of shares by unnamed underlying funds to Participating Separate Accounts and Qualified Plans.

11. The Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to qualified Plans in addition to offering their shares to separate accounts of affiliated or unaffiliated insurance companies which issue either or both variable annuity contracts or variable life insurance contracts. The Order sought in this Application is identical to these precedents with respect to the conditions Applicants proposed to be imposed on Participating Separate Accounts and Qualified Plans in connection with investment in the Funds. The Commission has also granted exemptions similar to those requested herein where a fund's shares would not be sold directly to Qualified Plans. Applicants believe that the same policies and considerations that led the Commission to grant such exemption to other applicants are present here.

12. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the Act provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or (2) of the Act is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the act, disqualify the insurance company or any of its affiliates from sserving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the Act provide, in effect, that the fact that any company disqualified under section 9(a)(1) or (2) of the Act is affiliated with the insurance company would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6e–2(b)(15) and 6(e)–3(T)(b)(15) under the Act from requirements of Section 9 of the Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals involved in an

insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Those Rules further recognize that it also is unnecessary to apply section 9(a) of the Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. Neither the Participating Insurance Companies) that may utilize a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. Neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the Existing Funds or the Future Funds.

15. Those individuals who participate in the management or administration of the Existing Funds and the Future Funds will remain the same regardless of which Separate Accounts, insurance companies or Qualified Plans use such Funds. Applying the requirements of Section 9(a) of the Act because of investment by the separate accounts of other insurers and Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contractowners. Moreover, in the case of Qualified Plans, the Plans, unlike the separate accounts, are not themselves investment companies, and therefore are not subject to section 9 of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of an Existing Fund or any Future Fund except by virtue of its holding 5% or more of a Fund's shares.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Pass-through voting privileges will be provided with respect to all variable contractowners so long as the Commission interprets the Act to require pass-through voting privileges for variable contractowners.

17. Rules 6e–2(b)(15)(iii) and Rules 6e–3(T)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii) and Rules 6e–3(T)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investment of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules.) Rules 6e–2(b)(15)(iii)(B) and Rules 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of contractowners if the contractowners initiate certain changes in an underlying fund's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules.)

18. Rules 6e–2 and 6e–3(T) under the Act recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an issuer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, Rule 6e–3(T)'s corresponding provisions for flexible premium variable life insurance undoubtedly were adopted in recognition of the same factors.

19. With respect to the Qualified Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to an ERISA covered Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the ERISA covered Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

20. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in an Existing Fund or a Future Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Existing Fund or a Future Fund by a Plan will not create any of the voting complications occasioned by mixed

funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, the purchase of shares of the Existing Funds or Future Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

23. The prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. When Rule 6e–2 under the Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, the Commission staff contemplated underlying funds with public shareholders and with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contractowners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders.

24. However, for reasons unrelated to the Act, IRS Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for most variable contracts (including variable life contracts) in new section 817(h). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, section 817(h) of the Code provides, in effect, that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *.'' Accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will generally not be adequately diversified. In addition, any underlying mutual fund, including the Funds, that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Existing Funds or the Future Funds.

25. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

26. Shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–e(b)(15) and 6e–33(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its participating Separate Account's investment in the relevant Fund.

27. The right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

28. However, a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractholders' voting instructions should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw the Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal. There is no reason why the investment policies of the Existing Funds or any Future Fund would or should be materially different from what these policies would or should be if it funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program.

29. Neither the Existing Funds nor any Future Fund will be managed to favor or disfavor any particular Participating Insurance Company or type of Variable Contract. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable

life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and any Future Fund. Also, permitting mixed and shared funding will facilitate the establishment of additional Future Funds serving diverse goals. The broader base of contractowners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.

30. Applicants do not believe that the sale of the shares of the Existing funds and Future Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contractowners in the Participating Separate Accounts or to the participants under the Qualified Plans.

31. Applicants considered whether there are any issues raised under the Code or the Treasury Regulations or Revenue Rulings thereunder it Qualified Plans, VA accounts and VLI accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

32. Treasury Department Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate account of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii). Thus, Treasury Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest.

33. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Existing Funds and Future Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Existing Funds and the Future Funds at their respective net asset value in conformity with Rule 22c–1 under the Act (without the imposition of any sales charges) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Plan. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contractowners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-terms gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Separate Accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of an Existing Fund or any Future Fund.

34. Applicants considered whether it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans, and determined it is possible, as indicated below. In connection with any meeting of shareholders, the Existing Funds and Future Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Existing Funds and Future Funds would be no different from voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

35. Applicants also considered whether there are any conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Existing Funds and Future Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts

or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

36. Based on the foregoing, Applicants have concluded that even if there should rise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Existing Funds and Future Funds.

37. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

38. Applicants recognize that the foregoing is not an all inclusive list but rather is representative of issues which they believe are relevant to this Application. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Existing Funds and Future Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Existing Funds and Future Funds with respect to Qualified Plans is not substantially dissimilar from the Funds' current use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

39. Applicants note that when the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which currently make it possible for shares of the Existing Funds and Future Funds to be sold to Qualified Plans without adversely affecting the tax status of the insurer's Variable Contracts. Applicants submit that, although proposed regulations had been published, the commission did not envision this possibility when it last examined (b)(15) of rule 6e–3(T) and might well have broadened the exclusivity provision of that paragraph at that time to include Qualified Plans had this possibility been apparent.

40. Various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own.

41. Use of the Existing Funds and Future Funds as common investment vehicles for Variable Contracts would reduce or alleviate the above-mentioned concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Existing Funds' and Future Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Existing Funds and Future Funds available for mixed and shared funding and extended mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

42. Mixed and shared funding and extended mixed and shared funding benefits variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Existing Funds and Future Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners through greater diversification, and by making the addition of new portfolios more feasible.

43. Applicants assert that, regardless of the type of shareholder in an Existing Fund or any Future Fund, the investment adviser is or would be contractually obligated to manage such Existing Fund or Future Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board. The investment adviser works with a pool of money and does not take into account the identity of the shareholders. Thus, the Existing Funds are and any Future Fund will be managed in the same manner as any other mutual fund.

44. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

45. Applicants also note that the Commission has issued orders permitting mixed funding and shared funding. Applicant's proposal for mixed and shared funding and extended mixed and shared funding complies with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the members of the Board of each Existing Fund and Future Fund will consist of persons who are not ''interested persons'' of such Fund, as defined by section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona-fide resignation of any director or directors, then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between and among the interests of the contractholders of all Participating Separate Accounts and of participation of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such

conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners, variable life insurance contractowners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. HL Advisors (or any investment adviser to a Fund), and any Participating Insurance Companies and Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of an Existing Fund or a Future Fund (collectively, ''Participants'') will report any potential or existing conflicts to the relevant Board. Such Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Existing Funds and any Future Funds, and these responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested members of such Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Existing Fund or Future Fund and reinvesting such assets in a different investment medium, which may include another such Fund, (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity contractowners or life insurance contractholders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the relevant Existing Fund or Future Fund, to withdraw such Participating Insurance Company's separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Existing Fund or Future Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the relevant Existing Fund or Future Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contractowners and in the case of Qualified Plans, will be carried out with a view only to the interest of Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Existing Fund, any Future Fund or HL Advisors (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of the contractowners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in an Existing Fund or Future Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in the Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their

participation in an Existing Fund or Future Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contractowners, HL Advisors or any of its affiliates will vote its shares of any Existing Fund or Future Fund in the same proportion of all variable contract owners having voting rights with respect to the relevant Fund.

8. Each Existing Fund and Future Fund will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in the shares of the Existing Funds and any Future Fund), and, in particular, each such Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Existing Funds and Future Funds are not, or will not be, the type of trust described in section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each such Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Existing Fund and Future Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each such Fund will disclose in its prospectus that: (a) Shares of such Fund may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contractowners participating in such Fund and the interests of Qualified Plans investing in such Funds may conflict; and (c) such Funds' Board will monitor events in order to identify the existence of any material irreconciliable conflicts and determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then each Existing Fund and each Future Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Existing Fund and any Future Fund such reports, materials, or data as a Board may reasonably request so that the directors of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Existing Funds and Future Funds.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. An Existing Fund and any Future Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Fund governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any such Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Maragaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–26032 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–24674; 812–11878]

GE Asset Management Incorporated, et al.; Notice of Application

October 3, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain series of GE Institutional Funds (the ''Fund'') to accept an investment in-kind from certain affiliated investors in exchange for shares of the series.

Applicants: GE Asset Management Incorporated (GEAM) and the Fund.

Filing Dates: The application was filed on December 10, 1999, and amended on May 3, 2000 and October 3, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, GE Asset Management Incorporated, 777 Long Ridge Road, Stamford, Connecticut 06927.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel: 202–942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company organized under the laws of the State of Delaware in 1997 and registered under the Act. The Fund consists of 17 series and is designed primarily for institutional investors.

2. GEAM is an investment adviser registered under the Investment Advisers Act of 1940 and serves as the investment adviser to the Fund. GEAM is a direct wholly-owned subsidiary of General Electric Company (''GE'').

3. GE Capital Asset Maintenance Plan Master Trust and Asset Management Plan for GE Affiliated Companies (the ''Affiliated Investors'') are qualified retirement plans and trusts maintained by GE and its affiliates. The Affiliated Investors currently own more than 5% of certain series of GE Funds (''Redeeming Series''), an open-end management investment company organized under the laws of the Commonwealth of Massachusetts in 1992 and registered under the Act.[1] GE Funds offers shares primarily to retail and smaller institutional investors who generally do not meet the requirements for investment in the Fund. The Affiliated Investors first invested in GE Funds in 1995.

4. Applicants propose that the Affiliated Investors redeem in-kind all of their shares of the Redeeming Series and immediately invest all the proceeds of the redemptions in corresponding series of the Fund (''Fund Series'') with substantively the same investment objectives and strategies as the Redeeming Series (the ''Purchase'').[2] The Purchase will occur as soon as practicable after the relief requested in the application is granted or on November 1, 2000, whichever is later.[3] The securities to be delivered to the Fund in connection with the Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset value for the Fund Series. The Affiliated Investors have determined to redeem their interests in the Redeeming Funds and invest in the corresponding Fund Series to benefit from the lower fund operating expenses of the Fund Series. Applicants state that, since the Affiliated Investors are pension plans, it is expected that they will be long-term investors in the Fund.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such registered investment company, any security or other property.

2. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with, such other person, and if the other person is an investment company, any investment adviser of the company. Applicants state that the Affiliated Investors may be deemed to be controlled by or under common control with the Fund's investment adviser by virtue of being a pension plan sponsored by GE or a GE-affiliated entity. The Affiliated Investors, therefore, are affiliated persons of the Fund, and the Purchase may be prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC shall exempt a transaction from the restrictions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the Purchase satisfy the standards set forth in section 17(b). Applicants state that Fund's board of trustees (''Board''), including all of the non-interested trustees, has determined that the Purchase is in the best interests of the shareholders of the Fund Series. Applicants also state that the Purchase will comply with rule 17a–7(c) and (d) of the Act and the conditions set forth below.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities to be transferred to the Fund Series in the Purchase will be valued in the same manner as they would be valued for purposes of computing the Fund Series' net asset values.

2. At the next regular meeting following the Purchase, the Board, including a majority of the disinterested trustee, will determine (a) whether the securities transferred in the Purchase were valued in accordance with condition 1; and (b) whether the acquisition of the securities was consistent with the policies of the Fund Series as reflected in their registration statements and reports filed under the Act.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Purchase occurs, the first two years in an easily accessible place, a written record of the Purchase setting forth a description of each security transferred, the terms of the transfer, and the information or materials upon which the determinations required by condition 2 were made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–26033 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–11–M

[1] As of June 30, 2000, the Affiliated Investors owned 11.27% of the GE Funds International Equity Fund, 7.25% of the GE Funds U.S. Equity Fund, 8.87% of the GE Funds Strategic Investment Fund, and 5.02% of the GE Funds Fixed Income Fund.

[2] The Redeeming Series will rely on and adhere to all of the conditions enumerated in the no-action letter issued by SEC staff to *Signature Financial Group, Inc.* (publicly available Dec. 28, 1999) in connection with the redemptions in-kind of the Affiliated Investors' shares in the Redeeming Series.

[3] The Affiliated Investors will purchase shares of the following Fund Series with the proceeds of their redemptions: GE Institutional International Equity Fund, GE Institutional U.S. Equity Fund, GE Institutional Strategic Investment Fund and GE Institutional Fixed Income Fund.

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–24675; 812–12176]

Scudder Pathway Series, et al; Notice of Application

October 3, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit Scudder Income Fund (''Income''), a series of Scudder Portfolio Trust (the ''Trust''), to acquire substantially all of the assets and all of the liabilities of Scudder Corporate Bond Fund (''Corporate Bond''), also a series of the Trust (the ''Reorganization''). Because of certain

affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Scudder Pathway Series (''Pathway''), the Trust, and Scudder Kemper Investments, Inc. (''Scudder Kemper'').

Filing Dates: The application was filed on July 21, 2000 and amended on October 2, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Two International Place, Boston, Massachusetts, 02110.

FOR FURTHER INFORMATION CONTACT: Julia H. Kim, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representation

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers four series. Corporate Bond and Income (each a ''Fund,'' and together, the ''Funds'') are two of the four series of the Trust. Pathway, a Massachusetts business trust registered under the Act as an open-end management investment company, has three series, each of which operates as a fund of funds pursuant to an order from the SEC.[1] One series offered by pathway, the Balanced Portfolio, owns more than 5% of the outstanding voting shares of each of Corporate Bond and Income. Scudder Kemper, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to the Funds and Pathway.

2. On February 7, 2000, the board of trustees of the Trust (the ''Board''), including the trustees who are not ''interested persons,'') as defined in section 2(a)(19) of the Act (''Independent Trustees''), unanimously approved an agreement and plan of reorganization (the ''Plan'') between the Funds. Under the Plan, Income will acquire all or substantially all of the assets and all of the liabilities of Corporate Bond, in exchange for Class S shares of Income (the ''Reorganization''). The shareholders of Corporate Bond will receive Class S shares of Income having an aggregate net asset value equal to the aggregate net asset value of Corporate Bond shares held by the shareholders, as determined at the close of business on the business day immediately preceding the day of the closing of the Reorganization (''Closing Date''). The value of the assets of the Funds will be determined in accordance with the valuation procedures described in each Fund's then-current prospectus and statement of additional information. Corporate Bond will distribute Class S shares of Income, pro rata, to Corporate Bond's shareholders and will liquidate. The Closing Date is expected to be at the end of October.

3. Applicants state that the investment objectives and policies of Income and Corporate Bond are substantially similar and that both have identical investment restrictions. No sales charges will be imposed on Corporate Bond shareholders in connection with the Reorganization.

4. The Board, including the Independent Trustees, determined that the Reorganization is in the best interests of each Fund and its shareholders, and that the interests of the existing shareholders of each Fund would not be diluted by the Reorganization. In assessing the Reorganization, the Board considers various factors, including: (a) The fee and expense ratios of the Funds; (b) the terms and conditions of the Reorganization; (c) compatibility of each Fund's investment objectives, policies, and restrictions; (d) Scudder Kemper's agreement to provide administrative services at a fixed rate for an initial three-year term; (e) the services available to the shareholders of the Funds; (f) the costs of the Reorganization; (g) the prospects for Income to attract additional assets; (h) the tax consequences of the Reorganization; and (i) the investment performances of the Funds. Scudder Kemper will bear Corporate Bond's costs associated with the Reorganization. Income will bear up to $450,559 for its share of Reorganization costs, with Scudder Kemper paying any Reorganization costs allocated to Income in excess of $450,559.

5. The Reorganization is subject to a number of conditions, including that: (a) The Plan is approved by the shareholders of Corporate Bond; (b) the Funds receive an opinion of counsel that all regulatory consents, authorizations, approvals or filings have been obtained or made; (c) all consents of other parties have been obtained; (d) that all representations and warranties of the Trust on behalf of each Fund in the Plan be true and correct in all material respects; (e) Income adopt a new investment management agreement and enter into an administrative services agreement with Scudder Kemper, each in a form reasonably satisfactory to Corporate Bond; and (f) the Funds receive an opinion from counsel that the Reorganization will be tax-free. Either Fund may terminate the Plan upon a material breach of the Plan by the other or if any condition set forth in the Plan has not been fulfilled or waived by the party entitled to its benefits. Applicants agree not to make any material changes to the Plan without prior Commission approval.

6. A registration statement on Form N–14 containing a combined prospectus/proxy statement was filed with the Commission on March 3, 2000 and became effective on April 7, 2000. Proxy solicitation materials were mailed to Corporate Bond shareholders on or about April 18, 2000, and definitive proxy materials were filed with the Commission on April 25, 2000. The shareholders of Corporate Bond approved the Plan at a special meeting held on July 13, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchase any security from, that company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly owned a connelled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other

[1] *Scrudder Global Fund, Inc.,* Investment Company Act Rels. No. 222104 (July 26, 1996) (notice) and 22168 (August 23, 1996) (order).

person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act generally exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that they may not be able to rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than those set forth in the rule. Applicants state that the Balanced Portfolio of Pathway owns more than 5% of the outstanding voting securities of each of the Funds and did not use mirror or pass-through voting when it voted its Corporate Bond shares in favor of the Reorganization.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants also state that the Board, including the Independent Trustees, determined that the participation of each Fund in the Reorganization is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of shareholders of each Fund. Applicants further state that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Ina ddition, applicanats state that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–26034 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Announcement of SBA Export Express—a New Pilot Loan Guaranty Program for Exporters

Department of Commerce statistics indicate that small businesses with fewer than 20 employees represent approximately 65 percent of all exporters in the U.S. The SBA recognizes that many of these exporters have financing needs that are too small to be met profitably by traditional lending sources. SBA is mandated under the Small Business Act to increase the access of small businesses to capital for the purpose of fostering international trade. To that end, the Agency has developed a pilot loan guaranty program called SBA Export Express. This pilot will streamline the processing of small export loans by allowing a lender to use its own documents based on its use of established and proven credit review and analysis procedures for loans of similar size and type. SBA Export Express is a sub-program of SBAExpress, conforming to its already established policies and procedures. Its difference from SBAExpress lies in its exclusive focus on existing and potential small business exporters.

To be eligible for this pilot loan guaranty program, an applicant must demonstrate that loan proceeds will enable their company to enter a new export market or expand an existing export market. To fulfill this requirement, a business plan must be submitted to the lender with information provided to establish a reasonable likelihood of expanded export sales. In addition, applicants must have been in operation, though not necessarily in exporting, for at least 12 months.

SBA Export Express proceeds are to be used by small businesses to develop or expand their export markets. SBA Export Express proceeds may be used to finance: standby letters of credit that are used as bid or performance bonds; revolving lines of credit for export purposes; term loans; and other financing to enable small business concerns, including small business export trading companies and export management companies, to develop foreign markets. Proceeds may also be used for the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods or services involved in international trade.

To encourage participating lenders to address more aggressively the needs of small business exporters, SBA's percent of loan guaranty under SBAExpress will be the same as that for the regular 7(a) loans, or currently 75 percent (80 percent if the loan amount is $100,000 or less). The maximum loan amount eligible for SBA Export Express will be $150,000.

Recognizing that technical assistance can be crucial to the success of small business exporters, the SBA Export Express program requires a technical assistance component, delivered through the SBA personnel at U.S. Export Assistance Centers (USEACs). This assistance may include training offered by: the Export Trade Assistance Partnership (ETAP) Program; International Trade Centers (located at Small Business Development Centers); Service Corps of Retired Executives; District Export Councils; or the Export Legal Assistance Network (E-LAN).

Participation in the SBA Export Express program will be granted to any lender that has been approved for participation in SBAExpress. SBA Export Express will adopt the abbreviated SBAExpress loan application, which will be submitted to the Agency's centralized processing center in Sacramento. The processing center will determine the borrower's eligibility and issue a SBA loan number.

FOR FURTHER INFORMATION CONTACT: Paul Kirwin of SBA at 202–205–7261.

Dated: July 17, 2000.

Jeanne Sclater,

Associate Deputy Administrator for Capital Access.

[FR Doc. 00–25992 Filed 10–10–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for

the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Request for Replacement SSA–1099/SSA–1042S Social Security Benefits Statement—0960–0583. The information requested by the Social Security Administration (SSA) via the Internet will be used to verify identity and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 583 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application of Circuit Court Law—0960–0581. SSA regulations at 20 CFR 404.985 and 416.1485 inform claimants of their right to request that a published Acquiescence Ruling (AR) be applied to a prior determination when we make a determination or decision on a claim between the date of the Circuit Court decision and the date we publish the AR. The regulations also specify that claimants can request that the AR be applied to a prior determination or decision by submitting a statement that demonstrates how the AR could change the prior determination or decision. SSA will use the information provided in the statement to readjudicate the claim, if the claimant demonstrates the Ruling could change the prior determination. Claimants may use Form SSA–795, Statement of Claimant or Other Person (OMB No. 0960–0045), to request and support application of a published AR to the prior determination or decision. The respondents are claimants whose determinations or decisions on their claims may be affected by an AR.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 28,333 hours.

2. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment-0960–0145. SSA uses Form SSA–8202–F6 to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The respondents are recipients of SSI benefits or their representative payees.

Number of Respondents: 920,000

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 260,667 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW.,Washington, DC 20503

Dated: October 4, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–25982 Filed 10–10–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3440]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dangerous Curves: The Art of the Guitar''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], I hereby determine that the objects to be included in the exhibit, ''Dangerous Curves: The Art of the Guitar,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts from on or about November 5, 2000, to on or about February 24, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 29, 2000.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–26090 Filed 10–10–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice Number 3412]

Notice of Meetings: United States International Telecommunication Advisory Committee (ITAC)—Telecommunication Standardization Sector (ITAC–T), National Committee & U.S. Study Groups A & D

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC)—Telecommunication Standardization (ITAC–T) National Committee and US Study Groups A and D. The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. Except where noted, meetings will be held at the Department of State, 2201 ''C'' Street, NW, Washington, DC.

The ITAC–T National Committee will meet from 9:30 to noon on October 18, 2000, at the Department of State to review the results of the ITU–T World Telecommunication Standardization Assembly (WTSA) and organize the national study program to support those results.

The ITAC–T U.S. Study Group A will meet from 2:00 to 4:00 on November 14, 2000, at the Federal Communications Commission to prepare positions for the ITU–T Study Group 3 meeting starting in December.

The ITAC–T U.S. Study Group D will meet from 9 a.m. to noon on October 19, 2000, at the Department of State to prepare positions for the next ITU–T Study Groups 8 and 16 and Study Group 9 Working Party 1.

Members of the general public may attend these meetings. Directions to meeting locations and actual room assignments may be determined by calling the Secretariat at 202 647–0965/2592. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC–T, U. S. Study Group A or D) and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: October 2, 2000.

John R. Gilsenan,

Chairman, ITAC–R, U.S. Department of State.

[FR Doc. 00–26089 Filed 10–10–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Conntections

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for public comments.

SUMMARY: The Coast Guard announces the availability of summaries from the seven Regional Dialog Sessions sponsored by the Interagency Committee for Marine Transportation System. These summaries report on progress in addressing the Marine Transportation System Report recommendations and coordinating Marine Transportation System issues at the regional level.

DATES: Comments and related material must reach the Docket Management Facility on or before November 30, 2000.

ADDRESSES: 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–1998–3553), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand 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 notice. 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 at the same address 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 this notice, or the RDS's, call LCDR Greg Case, Coast Guard, telephone 202–267–0386. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Regional Dialog Sessions or the Marine Transportation System. If you do so, please include your name and address, identify the docket number for this notice (USCG–1998–3553) and give the reasons for each comment. You may submit your comments and material by mail, hand 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. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background

The Marine Transportation System (MTS) includes waterways, ports, and their intermodal connections with highways, railways, and pipelines. The MTS links the United States to overseas markets and is important to national security interests. Excluding Mexico and Canada, over 95% of the U.S. foreign trade by tonnage are shipped by sea, and 14% of U.S. inter-city freight is transported by water. Forecasts show that U.S. foreign ocean-borne trade is expected to more than double by the year 2020; and commuter ferries, recreational boating, and other recreational uses of the waterway are expected to increase, placing even greater demands on the marine transportation system. In turn, an expanding marine transportation system will pose greater challenges for

protecting and enhancing the environment

Many federal agencies, state and local governments, port authorities, and the private sector share responsibility for the marine transportation system. Recognizing that the economic, safety, and environmental implications of aging infrastructure, inadequate channels, and congested intermodal connections will become more critical as marine traffic volume increases, the Secretary of Transportation began a multi-agency MTS initiative in March 1998.

The MTS initiative began in the spring of 1998 with seven Regional Listening Sessions to gather stakeholder input on the current state and future needs of the MTS. The input received at the listening sessions became the basis for a National MTS Conference in November of 1998. After the conference, the Secretary established the Congressionally mandated MTS Task Force to conduct an assessment of the U.S. Marine Transportation System. The September 1999 MTS Task Force Report to Congress, An Assessment of the Marine Transportation System, recommended action in seven strategic areas. Regional coordination and implementation of the recommendations contained in Chapter 6 of the Report to Congress was the focus of the Regional Dialog Sessions. The docket (USCG–1998–3553) contains the MTS Report to Congress, summaries of the Regional Listening Sessions, the Proceedings of the National MTS Conference, and the Regional Dialog Sessions Summaries. You may access it electronically on the Internet at http://dms.dot.gov.

Next Steps

Comments received during the comment period will be considered by an Interagency Committee for the Marine Transportation System and Marine Transportation System National Advisory Council to assess the adequacy of the marine transportation system. They will continue examining the critical marine transportation issues, and recommending strategies and plans of action to ensure safety, advance national interest, including economic competitiveness and national security in the marine transportation arena.

Dated: October 4, 2000.

J.P. High,

Director of Waterways Management.

[FR Doc. 00–26078 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held October 24–27, 2000, starting at 9 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036.

The agenda will include:

Specific Working Group Sessions

October 24

Working Group (WG–1), Third Civil Frequency and WG–2C, GPS/Inertial.

October 25

9:00–12:00
WG–4, Precision Landing Guidance (GPS/LAAS) and WG–6, GPS/Interference;
1:30–4:30
WG–2, GPS/WAAS
SC–159 AD Hoc, Recommendation and WG5, Surface Surveillance

October 26

WG–2, GPS/WAAS
WG–4, Precision Landing Guidance (GPS/LAAS) and WG–6, GPS/Interference

October 27: Plenary Session

(1) Introductory Remarks;
(2) Approve Summary of Previous Meeting;
(3) Review Working Group (WG) Progress and Identify Issues for Resolution:
(a) GPS/3rd Civil Frequency (WG–1);
(b) GPS/WAAS (WG–2);
(c) GPS/GLONASS (WG–2A);
(d) GPS/Inertial (WG–2C);
(e) GPS/Precision Landing Guidance (WG–4);
(f) GPS/Airport Surface Surveillance (WG–5);
(g) GPS Interference (WG–6);
(h) SC–159 Ad Hoc;
(4) Review of EUROCAE Activities;
(5) Review/Approve Final Draft, SC–159, Response to the Johns Hopkins University Applied Physics Laboratory Recommendation Regarding Receiver Autonomous Integrity Monitoring;
(6) Assignment/Review of Future Work;
(7) Other Business;
(8) Date and Location of Next Meeting;
(9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, at (202) 833–9339 (phone), (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 2, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–26017 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Sunday, November 5, 2000. The meeting begins at 1 p.m. The letter designations that follow each item mean the following: (I) Is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & Approval of August 10, 1999 Board Meeting #31 Minutes; (3) Federal ITS Initiatives Report (I/D); (4) Coordinating Council Report (I/D); (5) State Chapters Council Report (I/D); (6) International Affairs Council & World Congresses Reports (I/D); (7) ITS America Trade Association Report (I); (8) President's Report (External Issues) (I/D); (9) Other Business;

Business Session (U.S. DOT participants excused; Board Members, ITS America Members and Staff Only.) (10) Report to the Executive Committee (I/D); (11) Report of the Nominating Committee (I); (12) President's Report (Internal Issues) (I/D); (13) Other Business. Adjournment until January 11, 2001, 2 p.m. Board of Directors Meeting #37 in Washington, D.C.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs,

strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Sunday, November 5, 2000, from 1 p.m.–5 p.m. Room TBA.

ADDRESSES: Lingotto Congress Center, Via Nizza, 280, Turin, Italy. Phone: +39–011 2446 911; Fax: +39–011 2446 900.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 5, 2000.

Jeffrey Paniati,

Deputy Director,, ITS Joint Program Office.

[FR Doc. 00–26079 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2000–8060]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Challenge Business 32.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 13, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–8060. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: *Challenge Business 32.* Owner: Challenge Business International, Ltd.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''The yacht is 66.24′ long, has a breadth of 17.32′ and a depth of 8.6′. Under our Simplified Measurement Rules, (46 C.F.R. Part 69), the yacht has a gross tonnage of 49.33 and a net tonnage of 44.40″.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The yacht will be used to generate interest in a race called the New World Challenge. In that race, ordinary people, from all walks of life, often with little or no sailing experience, will become members of the crew. They will sail on 10 newer, slightly larger boats that will depart from San Francisco and sail to Japan, Hong Kong, Singapore, Cape Town, Buenos Aires, Cape Horn, and back to San Francisco. The interest, love and excitement of sailing such boats, in difficult conditions, over a period of approximately 10 months, will be supported by a number of corporate sponsors who expect to benefit from the team building aspect of the race and the publicity that the race will generate. In addition, a selected charity will receive approximately $1,000,000.00.'' ''This yacht will be based in San Francisco, and may be sailed on San Francisco Bay and anywhere between the areas of Southern California and Vancouver, British Colombia.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1996. Place of construction: United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This activity will have absolutely no impact on any existing commercial passenger operation. The yacht we propose to use has been sailed in another race organized by Challenge Business. This yacht is very similar in size, design, living accommodations, communications capability, sail area, equipment, handling characteristics, etc. to the 10 boats that will be competing in the race. Thus, it is the most representative, ''experienced'', boat that could be used for the intended purposes. No existing commercially operated yacht can duplicate the feel, characteristics and overall experience of sailing in the New World Challenge race.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Similarly, the proposed activity will have absolutely no impact on U.S. shipyards.

This yacht is uniquely valuable in that it has been raced under similar conditions, in a similar race while manned by individuals who had little, if any, sailing experience before sailing aboard such a yacht. This yacht most accurately represents the look, feel and impact that the 10 yachts in the race will have on the sailors, media, press, sponsors and supporters. Given its historical connection to a similar race, no newly built U.S. yacht could preform (sic) the same role. Further, we are not aware of any similar yachts currently under construction in the U.S.''

Dated: October 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–25995 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8061]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Challenge Business 35.*

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before November 13, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–8061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Challenge Business 35.* Owner: Challenge Business International, Ltd.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''The yacht is 66.24′ long, has a breadth of 17.32′ and a depth of 8.6′. Under our Simplified Rules, (46 CFR Part 69), the yacht has a gross tonnage of 49.33 and a net tonnage of 44.40.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''The yacht will be used to generate interest in a race called the New World Challenge. In that race, ordinary people, from all walks of life, often with little or no sailing experience, will become members of the crew. They will sail on 10 newer, slightly larger boats that will depart from San Francisco and sail to Japan, Hong Kong, Singapore, Cape Town, Buenos Aires, Cape Horn, and back to San Francisco. The interest, love and excitement of sailing such boats, in difficult conditions, over a period of approximately 10 months, will be supported by a number of corporate sponsors who expect to benefit from the team building aspect of the race and the publicity that the race will generate. In addition, a selected charity will receive approximately $1,000,000.00.'' ''This yacht will be based in Boston, Massachusetts, and may be sailed anywhere between Maine and Florida.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1996. Place of construction: United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This activity will have absolutely no impact on any existing commercial passenger operation. The yacht we propose to use has been sailed in another race organized by Challenge Business. This yacht is very similar in size, design, living accommodations, communications capability, sail area, equipment, handling characteristics, etc. to the 10 boats that will be competing in the race. Thus, it is the most representative, ''experienced'', boat that could be used for the intended purposes. No existing commercially operated yacht can duplicate the feel, characteristics and overall experience of sailing in the New World Challenge race.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Similarly, the proposed activity will have absolutely no impact on U.S. shipyards. This yacht is uniquely valuable in that it has been raced under similar conditions, in a similar race while manned by individuals who had little, if any, sailing experience before sailing aboard such a yacht. This yacht most accurately represents the look, feel and impact that the 10 yachts in the race will have on the sailors, media, press, sponsors and supporters. Given its historical connection to a similar race, no newly built U.S. yacht could preform (sic) the same role. Further, we are not aware of any similar yachts currently under construction in the U.S.''

Dated: October 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–25996 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–8064]

Drowsy Driver Detection Device Laboratory Validation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Research Activity.

SUMMARY: The U.S. Department of Transportation (US DOT) is seeking partners who have the potential of providing non-contact eye closure monitoring sensors that can be used in a drowsy driver detection system field operational test. This notice describes criteria and tests that will be applied to each candidate sensor as part of the determination of fitness for inclusion in a field operational test. Manufacturers of devices that may meet these criteria are invited to submit a description of their device and detailed instructions on operations of the device to the US DOT.

Each device must satisfy the following criteria: (1) The device must measure the percentage of eyelid closure over time (PERCLOS) and calculate PERCLOS 1 and/or PERCLOS 3 (one-minute and three-minute running averages of PERCLOS, respectively); (2) this measurement must occur in real time; (3) the device shall be unobtrusive and have no physical contact with the driver; (4) the device shall cause no harmful emissions of any type over the duration of the experiment; and (5) the device operation shall include no moving parts that could easily fail or that would require replacement, service, or routine maintenance by the driver.

Any device that meets the above criteria may be included in a US DOT sponsored laboratory research study to evaluate the validity and reliability of its real-time drowsiness detection capability. Previous research has demonstrated the feasibility of implementing a drowsiness detection system with physical eyelid closure as a continuous input. A successful device should demonstrate that it can provide a valid measure of alertness during a vigilance task and that this detection is repeatable (reliability). In addition to being valid and reliable, this device needs to be practical, and must meet additional standards of high sensitivity and high specificity. Thus the device must detect all (or nearly all) fatigue events and fatigued vehicle operators (high sensitivity), without false alarms (high specificity.)

The offeror understands that the device, if selected to participate in the laboratory validation study, will be provided on an as-is basis, requiring no further engineering or development and should be operationally ready. Second, the analysis that is derived from this laboratory research will be made publicly available and the device returned to the submittor, and third, the offeror shall in no way interfere with the procedures or personnel involved in conducting or managing the study. Furthermore:

1. Previous studies and research involving the device may be disclosed and provided to the government to assist in evaluating the ''fitness'' of the device for evaluation.
2. Selection to participate in the laboratory validation study will NOT constitute an endorsement of the device by the federal government.
3. A small budget shall exist to ensure the appropriate hookup of the device to the experimental apparatus.
4. Involvement does not constitute a promise of future relations with the federal government.

The devices will be tested in a laboratory in a double blind testing methodology. Results will be sent back to manufacturer for interpretation. The US DOT is only interested in testing devices that are operationally ready, not devices under development.

DATES: Submit device descriptions on or before November 27, 2000.

ADDRESSES: All proposals should refer to Docket No. NHTSA–00–8064 and be submitted to Docket Management, Room PL–401, 400 7th Street, SW, Washington, D.C. 20590. Docket hours are from 10 a.m. to 5 p.m. Monday through Friday. Proposals may also be sent by electronic submission. The electronic submission procedure is described in the Docket Management section of the DOT's web site: http://www.dot.gov.

FOR FURTHER INFORMATION CONTACT: Paul Rau, Office of Vehicle Safety Research, NHTSA, (202) 366–0418; or Mr. Robert Carroll, Office of Research and Technology, FMCSA, (202) 366–9109, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

The DOT has created a program titled the Intelligent Vehicle Initiative (IVI). The goal of the IVI program is to increase safety on the nation's highways through the acceleration of the deployment of on-vehicle safety devices. One of the primary focus areas of the IVI is (commercial) motor vehicle driver fatigue. Further information on the IVI program may be found on: www.its.dot.gov/ivi. Additionally, the DOT has the goal of reducing truck involved fatalities by 50% by the year 2010. Additional information concerning DOT and commercial motor vehicle safety goals may be found on: *www.fmcsa.dot.gov* and *www.nhtsa.dot.gov.*

Further, technical conferences were held in 1997 and 1999, to discuss scientific validation findings regarding PERCLOS and other eye activity measures of alertness, and the status of efforts to develop in-vehicle sensors to continuously measure PERCLOS. The conferences were the primary focus of U.S. DOT-sponsored research over the past decade demonstrating the validity of PERCLOS as a measure of driver vigilance performance and also explored related psycho physiological alertness measures and alertness monitoring-related issues. The conferences reviewed potential and appropriate uses of PERCLOS data and ways to ensure the active participation and acceptance of drivers and management. The 1999 conference report, Ocular Measures of Driver Alertness: Technical Conference Proceedings (FHWA–MC–99–136) is available from National Technical Information Service (NTIS) (PB2000–101412), telephone: (703) 605–6000.

The vigilance task testing will be conducted in a controlled laboratory environment, similar to the previous work sponsored by NHTSA and FMCSA. A detailed description of this previous research, as well as the findings, can be obtained from the report entitled ''Evaluation of Techniques for Ocular Measurement as an Index of Fatigue and the Basis for Alertness Management'' published by the US DOT/NHTSA Report #DOT HS 808–762 is also available from NTIS. A summary in the form of an FMCSA Technical Analysis Brief may be found on http://www.fmcsa.dot.gov/safetyprogs/research/researchpubs.htm.

Each device will be tested on sleep deprived subjects who will remain awake for 42 hours, while working on a computerized test battery every two hours. The tests include a 20 minute psychomotor vigilance task (PVT) each two hours. PVT performance lapses refer to the times when a subject fails to respond to a task in a timely manner (*i.e.* <500 msec.); lapses will be recorded for each minute for the entire 20 minutes.

PVT lapses will be used as the validation criteria variable because driving is a vigilance task requiring psychomotor reactions, and psychomotor vigilance has been previously validated in medical research to be very sensitive to fatigue

from night work and sleep loss. Thus, PVT lapses are a valid index for evaluating candidate technologies.

Additionally: (1) Each device will be time locked in real-time to PVT performance to permit coherence estimates for minute-to-minute fluctuations and bout-to-bout fluctuations in alertness-drowsiness across the entire 42 hour period of wakefulness; (2) suppliers of devices will have no knowledge of PVT lapse data during the course of their extracting drowsiness/alertness scores from their devices, while the researchers will have no knowledge of the device's scoring algorithm. This double blind procedure will be maintained throughout data acquisition and analysis; (3) to further optimize the reliability of coherence estimates, technology suppliers will also be unaware of the timing of data acquisition; and (4) processed data (drowsiness scores) received from device manufacturers and PVT lapse data (criterion vigilance performance scores) from the researcher will be electronically forwarded to an independent professional statistician for calculation of coherence results.

The independent coherence results will be used as the basis for assessing the validity of the submitted device. The non-obtrusiveness and ease of use by the subject driver of the device will be assessed by the researchers during the laboratory phase of this research and be noted. Additionally, the device must be ''ready-to-use'' with clear instructions on how to operate the device. This means that the laboratory researchers will not have to do any engineering or re-configuring of the devices in order to use them in the laboratory validation.

Results from this program will be important criteria in the selection of devices eligible to participate in the planned IVI Operational Field Test of Drowsy Driver Technology planned to begin in late FY 2001.

Technology Submission Instructions

Submit proposed device descriptions to the U.S. Department of Transportation's Public Docket Management Room at the address listed above. The submission should include the following:

1. A detailed description of the device, along with operating instructions.
2. It should be no more than 10 pages in length.
3. Any existing evidence of objective validity, reliability, sensitivity, or specificity is encouraged to be submitted. This information DOES NOT count toward the 10 page length limit.
4. Three copies of your submission.
5. Your name, address, phone number and e-mail address.
6. DO NOT submit your device at this time.
7. Applications, once submitted, become the property of the US DOT.

Joseph N. Kanianthra,

Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–26015 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–69]

Annual User Fee for Customs Broker Permit and National Permit; General Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that for 2001 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 19, 2001. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 19, 2001.

FOR FURTHER INFORMATION CONTACT: Michael S. Craig, Broker Management (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provides that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No.187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2001, the due date for payment of the user fee is January 19, 2001. It is expected that annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: October 4, 2000.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–25977 Filed 10–10–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 65, No. 197
Wednesday, October 11, 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 DEFENSE
DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ88

Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

Correction

In rule document 00–25488 beginning on page 59127 in the issue of Wednesday, October 4, 2000, make the following corrections:

§21.7636 [Corrected]

1. On page 59127, in the third column, in §21.7636, in paragraph (a)(1), in the second line, ''*21.7639'' should read ''§21.7639''.

2. On page 59128, in the same section, in paragraph (a)(2), subparagraph designation ''(i)'' is inserted after the seventh line and above the table.

[FR Doc. C0–25488 Filed 10–10–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 207P]

Controlled Substances: Proposed Aggregate Production Quotas for 2001

Correction

In notice document 00–25421 beginning on page 59214 in the issue of Wednesday, October 4, 2000, make the following correction:

On page 59214, in the third column, in the table, in the fifth line from the bottom, ''Porpiram'' should read ''Propiram''.

[FR Doc. C0–25421 Filed 10–10–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 11, 2000

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 210 et al.

National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 226, 235, 245

RIN 0584–AC 72

National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would incorporate the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the regulations governing the National School Lunch Program and the Child and Adult Care Food Program. Corresponding technical amendments are also proposed to the regulations governing the State Administrative Expense Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. Under this proposed rule, certain afterschool care programs would earn reimbursement for snacks served which meet program requirements. This rule, as proposed, would be expected to increase consumption of nutritious snacks in afterschool care programs.

DATES: To be assured of consideration, written comments must be postmarked on or before January 9, 2001.

ADDRESSES: Comments may be mailed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 1007, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. You may also submit comments electronically at CNDProposal@fns.gov. All written submissions will be available for public inspection in Room 1007 at this address during regular business hours (8:30 am to 5 pm) Monday through Friday. Since comments are being accepted simultaneously on several separate rulemakings, commentors on this proposed rule are asked to label their comments ''Reimbursement for Snacks in Afterschool Care Programs.''

FOR FURTHER INFORMATION CONTACT: Mary Jane Whitney (National School Lunch Program and Commodity Schools Program) or Ron Ulibarri (Child and Adult Care Food Program) at the above address or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1998, President Clinton signed Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Child Nutrition Reauthorization Act). The Child Nutrition Reauthorization Act (Act) expanded the availability of snacks for both the National School Lunch Program (NSLP) and the Child and Adult Care Food Program (CACFP). Specifically, the Act expanded the availability of snacks in the CACFP so that snacks served to children aged 12 to 18 in afterschool care programs located in the area of a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price meals can be claimed for reimbursement. The Act also expanded the NSLP to permit the service of afterschool snacks to children aged 12 to 18 and further expanded the eligibility of schools to ensure more schools can avail themselves of reimbursement for snacks served afterschool.

For ease of reference, we refer only to the NSLP and CACFP in this preamble. The proposed rule makes clear that the afterschool supplement would also be available in the Commodity School Program. The statutory authority for the NSLP afterschool supplement is in section 17A of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766a); the CACFP provisions are in section 17(r) of the NSLA (42 U.S.C. 1766(r)). Throughout this preamble, the commonly used terms ''afterschool snack(s)'' and ''snack(s)'' are used in lieu of the term ''supplement(s).'' Commenters will find additional discussion of this terminology in Part 4.I of this preamble.

The new afterschool snack component provides reimbursement for snacks served to children in certain afterschool care programs. According to the Conference Report that accompanied this law (House Report 105–786), Congress intended that these new components provide nutrition assistance to programs that offer the types of activities known to help reduce or prevent involvement in juvenile crime. The House Committee on Education and the Workforce further noted in its report (House Report 105–633) that ''afterschool programs, which operate between the end of a school day and time when parents return from work, provide a quality alternative to juveniles with too much time on their hands.'' The proposed afterschool snack components in the NSLP and CACFP are an effort to support and promote these afterschool programs.

This preamble is divided into five parts. Part 1 discusses the proposed core requirements for both the NSLP and CACFP afterschool snack components. Part 2 is a chart showing the requirements with their regulatory citations for the two programs as contained in this proposed rule. We included this chart in lieu of a detailed preamble discussion of each provision of this rule as an easy way to show the proposed changes and to compare the NSLP and CACFP requirements. Part 3 is a discussion, by program, of the particular provisions of this proposed rule that we think warrant elaboration. Part 4 discusses some related changes this rule proposes to make to the regulations. Part 5 addresses implementation dates.

Part 1—What Are the Proposed Core Requirements?

Section I. What Are the Proposed Core Requirements Under the NSLP?

A. Eligible Afterschool Care Programs

Under this proposal and in accordance with the criteria set forth under the NSLA, to be approved for reimbursement under the new afterschool snack component of the NSLP, snacks must be served in an eligible afterschool care program which is operated or sponsored by a school or school district which participates in the NSLP (see Part 3.I.A below) and:

- Is organized primarily to provide care for children after school;
- Has organized, regularly scheduled activities (*i.e.,* in a structured and supervised environment); and
- Includes education or enrichment activities.

These provisions are proposed at 7 CFR 210.4a, paragraphs (a) and (b). Hereinafter, references to proposed amendments to part 210 and 226 of Title 7 of the Code of Federal Regulations are made to the appropriate section number only.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

Programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs

and the YWCA. The key requirement for afterschool programs that include sports would be that they are ''open to all'' and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.

B. Ineligible Afterschool Care Programs

Under this proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the NSLP. In the Conference Report that accompanied the Child Nutrition Reauthorization Act, the Conference Committee declared its intent that support for afterschool snacks would not be provided to members of athletic teams. This limitation is found at § 210.4a(b)(2) of this proposed rule.

C. Eligible Children

Under the proposal, children would be eligible to participate in the afterschool snack service in traditional schools (see paragraphs (a) and (b) in the definition of ''School,'' § 210.2), if they participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19.

Reimbursement could also be claimed for students with disabilities (see definition of ''Student with disabilities'', § 210.2), regardless of their age, who participate in a school program of high school grade or under. This provision is found at § 210.4a(c) of this proposed rule.

Children enrolled in a residential child care institution (RCCI) would be eligible to participate in an approved afterschool care program's snack service if they are age 18 or under at the start of the school year. Snacks could be claimed for children who turn 19 during the school year. This provision is also found at § 210.4a(c) of this proposed rule.

There would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (e.g., Head Start or Even Start) *and* are participating in an approved afterschool care program after their regularly scheduled school day.

D. Days of Service

Under this proposal, the afterschool snack component in the NSLP would only operate on days that school is in session. This would include snacks served in afterschool care programs operated for children attending summer school, but would not include weekends, holidays, or school vacations. Snacks served *after school* to children attending schools that operate on a year-round basis also would be claimed through the afterschool snack component of the NSLP, assuming the other eligibility requirements are met. These provisions are found at § 210.4a(m) of this proposed rule. Organizations that offer programs during summer vacations may be eligible to participate in the Summer Food Service Program (SFSP).

E. Number of Afterschool Snacks Claimed

Under the proposal, school food authorities would claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced could be offered, but would not be claimed for reimbursement. This provision is found at § 210.4a(k) of this proposed rule.

F. Afterschool Snack Meal Pattern

The proposal would require that afterschool snacks meet the meal pattern requirements set forth in § 210.10(n), *What are the requirements for afterschool snacks*?. This provision is consistent with section 17A(c) of the Act which requires that the content of meal supplements specified under the CACFP be applied to the content of snacks served under the NSLP. Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that older children in afterschool care programs be offered larger portions based on their greater food energy requirements. Under the proposal, if schools offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks would be allowed to take any snack or choice offered as a part of the reimbursable snack. This requirement is found at § 210.4a(l) of this proposed rule.

G. Reimbursement

Under this proposal and consistent with the provisions of section 17A of the Act, school food authorities may claim reimbursement for afterschool snacks served in any facility selected as a site of an eligible afterschool care program, but only those afterschool care program sites that are ''area eligible'' would automatically receive reimbursement at the free rate for all snacks. (''Area eligibility'' is discussed in Part 1.I.H of this preamble.) In this case, free and reduced price applications would not be required.

Reimbursement for snacks served at schools or sites that are not ''area eligible'' would depend on the eligibility status of the child (i.e. free, reduced price, or paid). In this case, free and reduced price applications would be required to establish eligibility status. Generally, sites would not need to distribute new free and reduced price applications. In most cases, the families of children participating in the afterschool care program would have already applied for free and reduced price meals in connection with the lunch component of the NSLP or the School Breakfast Program. In these cases, the school food authority sponsoring the afterschool care program would use the free and reduced price meal determinations made for purposes of school lunches or breakfasts as documentation for free and reduced price afterschool snacks. If children in a school's afterschool care program are from another school, the school sponsoring the afterschool care program would use the determinations made by the children's regular school as long as it documents the source of the eligibility information.

However, if the afterschool care program that is not area eligible includes children from schools that do not participate in the NSLP lunch component or the School Breakfast Program, then the families for those children would not have had the opportunity to apply for free and reduced price meals. Only in this limited circumstance would a school food authority sponsoring the afterschool care program need to distribute free and reduced price applications and make eligibility determinations for purposes of afterschool snacks. These determinations must be made in accordance with 7 CFR part 245. These provisions are found at § 210.4a(n) and (o) of this proposed rule.

H. Area Eligibility

Under this proposal and consistent with the provisions of section 17A of the Act, a school would be ''area eligible'' if at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. Additionally, a school or site would be considered area eligible if it is located

in the attendance area of an elementary, middle, or high school in which at least 50 percent of its enrolled children are certified eligible for free or reduced price meals. This provision is found at § 210.4a(i) of this proposed rule.

The State agency would determine ''area eligibility'' for each afterschool care program site seeking to qualify as area eligible based on information provided by the school food authority. This provision is found at § 210.4a (f) of this proposed rule.

Area eligibility determinations would be made each school year, although FNS, the State agency, or the school food authority could change the determination if updated data indicates that a school or site is no longer area eligible. However, the State agency would not routinely require redeterminations of area eligibility status based on updated data before the school year has expired. We recognize that frequent re-evaluation of area eligibility is disruptive to program operations and have tried to balance this concern with the need for accountability.

Area eligibility determinations would be made using the free and reduced price meal data for the preceding October, or the other month the State agency has designated pursuant to § 210.9(b), *Agreements with State agency,* paragraph (20). School food authorities would make area eligibility determinations prior to beginning snack service each school year. Typically, the school food authority would make the determination before the start of the school year using the preceding October's free and reduced price meal data. Area eligibility provisions are found at § 210.4a(i) of this proposed rule.

School food authorities could, at any time during the school year, submit more recent area eligibility data that would qualify a site that was previously not area eligible. However, only data for October, or the other month designated by the NSLP State agency for free and reduced price data collection, would be used. For example, a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998). That site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change.

In order to facilitate area eligibility determinations, this rule proposes to amend § 210.9(b)(20). School food authorities would be required to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20).

I. Claiming Reimbursement

Sections 210.7, *Reimbursement for school food authorities,* and 210.8, *Claims for reimbursement,* of existing regulations establish procedures which are designed to ensure the fiscal accountability of the lunch and snack service. Prior to the 1998 authorization of the *afterschool* snack service, section 106(a) of the Child Nutrition and WIC Reauthorization Act of 1989 added section 17A (42 U.S.C.1766a) to the NSLA. Under section 17A, elementary and secondary schools that were participating in the CACFP as of May 15, 1989 could be reimbursed for meal supplements served in afterschool care programs. Implementing regulations issued in 1993 (58 FR 42483) made a number of changes to the reimbursement process specified in § § 210.7 and 210.8 to ensure that Federal reimbursement is being properly paid.

This proposed rule would make a number of technical revisions to § § 210.7 and 210.8 to reflect the use of the term ''afterschool snacks'' in lieu of ''meal supplements''. Additionally, this proposal would make several revisions to these sections in order to ensure the fiscal integrity of the afterschool snack service.

Under paragraph (c)(1)(iii) of existing § 210.7, school food authorities are required to base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children. This proposed rule would revise this paragraph to require school food authorities to base Claims for Reimbursement on daily lunch *and afterschool snack* counts. In recognition of the unconventional nature of many afterschool care programs, the Department has determined not to extend the requirement for point of service meal counts to the afterschool snack service. However, as discussed further in part 1.I.J, we are requiring schools to maintain daily attendance rosters or sign-in sheets.

Not requiring a point of service meal count is expected to provide some operational flexibility. However, school food authorities are reminded that they must continue to ensure that the Claim for Reimbursement accurately reflects the number of free, reduced price and paid lunches and afterschool snacks that are served to children eligible for such meals for each day of operation, Further, the Claim for Reimbursement cannot request payment for more than one lunch and afterschool snack per child per day.

This proposal would also make revisions to the internal controls set forth under existing § 210.8(a). Currently, school food authorities are required to establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement.

Under the proposed rule, the existing on-site review requirements for afterschool snack service would be modified. These proposed modifications are further discussed in Part 1.I.K of this preamble.

This proposal would also revise § 210.8(a) to expand the comparisons of daily free, reduced price and paid lunch counts to include comparisons of afterschool snack counts against data which will assist in the identification of snack counts in excess of the number of free, reduced price and paid snacks served each day to eligible children. The Department is not proposing specific data comparisons in order to provide school food authorities with the flexibility to design comparisons which ensure the fiscal integrity of the afterschool snack service under their jurisdiction.

Finally, under the proposal, school food authorities would be required to expand the system for following up on lunch counts which suggest the likelihood of counting problems to include afterschool snack counts which also have the likelihood of problems.

J. Recordkeeping and Reporting Requirements

In recognition of the fact that many afterschool care programs operate on a drop-in basis, this proposed rule would not require school food authorities to maintain traditional enrollment records for the children who attend their afterschool care programs. Instead, the rule would require school food authorities to maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found at § 210.4a(q) of this proposed rule.

The school food authority would report the number of afterschool snacks served by eligibility category and, for

each October, the number of schools and sites claiming reimbursement for afterschool snacks under the NSLP on the monthly Claim for Reimbursement. These provisions are found at § 210.4a(r) and at § 210.8(c) of this proposed rule.

K. School Food Authority Monitoring

This rule proposes to revise the current monitoring requirements for the NSLP afterschool care programs. Under § 210.9(c), *Afterschool care requirements,* paragraph (7) of existing regulations, school food authorities are required to review each afterschool snack service site twice each year; the first review must be made during the first four weeks that school is in operation. Under this proposal, the first review would be required to be made during the first six weeks of snack service, thus providing school food authorities with an additional two weeks for review activities. The proposed rule also clarifies that the school food authority must review the afterschool snack counting and claiming system and compliance with meal pattern requirements. These provisions are found at § 210.4a(s) of this proposed rule.

L. State Agency Monitoring

This proposed rule would add State agency monitoring requirements to § 210.19(a), *General Program management.* Under the proposed paragraph, each State agency would be required to determine whether school food authorities claiming reimbursement for afterschool snacks under § 210.4a meet the requirements of this part in order to establish whether Claims for Reimbursement are properly payable. Each State agency would be required to conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews could be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies could also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. These requirements are cross-referenced at § 210.4a(t).

Section II. What Are the Proposed Core Requirements Under the CACFP?

A. Eligible Institutions

Under this proposed rule, an ''at-risk afterschool care center'' is a public or private nonprofit organization (or proprietary title XX center) eligible to participate in the CACFP that provides nonresidential care to children through an approved afterschool care program in an eligible area. (Area eligibility is discussed in Part 1.II.I of this preamble.) At-risk afterschool care centers receive reimbursement at the free rate for all snacks served to eligible children. Like other centers in the CACFP, an at-risk afterschool care center may participate as an independent center by entering into an agreement directly with the State agency, or under the auspices of a sponsoring organization which enters into the agreement. This rule proposes to include a definition of ''at-risk afterschool care center'' in § 226.2. (Licensing is discussed in Part 4.II of this preamble.)

B. Eligible Afterschool Care Programs

Under the proposal, to receive reimbursement under the afterschool snack component of the CACFP, an at-risk afterschool care center must serve snacks to eligible children in an eligible afterschool care program. An eligible afterschool care program:

- Is organized primarily to provide care for children *after* school;
- Has organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment); and
- Includes education or enrichment activities.

Afterschool care program requirements are found at § 226.17a(b) of this proposed rule.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

Programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs and the YWCA. The key requirement for afterschool programs that include sports would be that they are ''open to all'' and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.

C. Ineligible Afterschool Care Programs

Under the proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the CACFP. This prohibition is found at § 226.17a (b)(2) of this proposed rule.

D. Eligible Children

Under the proposal, children would be eligible to participate if they are students who participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19. Reimbursement may also be claimed for persons, regardless of age, who meet the other requirements and are determined by the State agency to have one or more disabilities and are enrolled in a child care institution which serves a majority of persons age 18 and under. This provision is found at § 226.17a(c) of this proposed rule.

As in the NSLP, there would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (*e.g.*, Head Start or Even Start) and are participating in an approved afterschool care program after their regularly scheduled school day.

E. Days of Service

Under this proposal, the CACFP at-risk afterschool care centers would receive reimbursement for snacks served on any day during the regular school year, including weekends, holidays, and school vacations that fall during the regular school year. In fact, a CACFP at-risk afterschool care center could choose to operate only on weekends, holidays and school vacations during the regular school year. However, CACFP at-risk afterschool care centers would *not* be reimbursed for snacks served during summer vacations, because the Child Nutrition Reauthorization Act explicitly limits reimbursement to snacks served during the ''regular'' school year. These provisions are found at § 226.17a(l) of this proposed rule.

Organizations that offer programs during summer vacations may also be eligible to participate in the Summer Food Service Program (SFSP). CACFP at-risk afterschool care centers that qualify for the SFSP would be able to claim 2 meals, or 1 meal and 1 snack, per child per day under that Program. For schools that operate on a year-round basis, snacks served afterschool in the summer to children could be claimed through the afterschool care

components of either the NSLP or CACFP, assuming the other eligibility requirements are met.

F. Number of Snacks Claimed

Under the proposal, reimbursement may be claimed for one snack per child per day. An at-risk afterschool care center that provides care to a child under another component of the CACFP during the same day could not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the afterschool snack. All meals and any snacks would be claimed in accordance with the requirements for the applicable component of the CACFP (*e.g.*, child care centers, outside-school-hours care centers). This provision is found at § 226.17a(j) of the proposed rule.

G. Snack Meal Pattern

The proposal would require that snacks meet the meal pattern for supplemental food (snacks) in § 226.20(a)(4) or (c)(4). Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. This provision is found at § 226.17a(k) of this proposed rule. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that afterschool care programs offer larger portions for older children based on their greater food energy requirements.

H. What Reimbursement Do At-Risk Afterschool Care Centers Earn?

Under the proposal, CACFP afterschool care programs must be ''area eligible'' in order to qualify as at-risk afterschool care centers. As such, all snacks would be reimbursed at the free rate. Applications for free and reduced price meals would not be required for at-risk afterschool care centers. This provision is found at § 226.17a(m) of the proposed rule.

Afterschool care programs that do not meet area eligibility criteria would not receive reimbursement for afterschool snacks under the at-risk component of the CACFP. However, such programs could be eligible to participate in the CACFP as outside-school-hours care centers, provided they meet all of the requirements established for these facilities under the CACFP regulations. If they meet the criteria set forth in § 210.4a, they may be eligible to participate in the NSLP afterschool snack component.

I. Area Eligibility

As mentioned above, only those afterschool care programs that are ''area eligible'' (*i.e.*, located in an eligible area) could claim reimbursement as an at-risk afterschool care center. Under this proposal, an afterschool care program site would be located in an ''eligible area'' if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. Area eligibility requirements are found at § 226.17a(h) of this proposed rule.

Under this proposed rule, the State agency would determine the area eligibility for each afterschool care program site seeking to qualify as area eligible based on information provided by the at-risk afterschool care center (for independent centers), or by the sponsoring organization of the at-risk afterschool care center(s). This provision is found at § 226.17a(e) of this proposed rule. We would encourage State agencies to provide technical assistance to sponsoring organizations and independent at-risk afterschool care centers in obtaining the necessary documentation of area eligibility.

Area eligibility determinations for the CACFP would be made once every *three years.* FNS, the State agency or the sponsoring organization could change the determination if updated data indicates that an at-risk afterschool care center is no longer area eligible. However, the State agency may not routinely require redeterminations of area eligibility status based on updated data before the three-year period has expired. We decided to propose to make the CACFP determinations valid for three years to be consistent with the statutory mandate for tiering determinations for day care homes participating in the CACFP. Tier I day care home determinations based on school data are valid for three years.

Area eligibility determinations would be made using free and reduced price school meal data for the preceding October, or the other month the NSLP State agency has designated pursuant to § 210.9(b)(20) of this proposed rule. At-risk afterschool care centers could begin program operations at any time during the year. For example, if a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998), that site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change. These provisions are found at § 226.17a(h)(2) of this proposed rule.

As previously mentioned, in order to facilitate area eligibility determinations, this rule proposes to expand current § 210.9(b)(20) to require school food authorities to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20) to assist with tiering determinations for day care homes in the CACFP.

Under this proposed rule, § 210.19(f) is similarly expanded to require this information to be provided to the CACFP State agency along with the list of the qualifying elementary schools already required to be provided. Commenters should note that, unlike tiering determinations, area eligibility determinations for at-risk afterschool care centers would be based on the attendance area for *any* school in whose attendance area the afterschool care program is located, not just elementary schools. Also unlike tiering determinations, area eligibility could not be established using census data since, unlike tiering, the use of census data is not authorized by statute.

J. Recordkeeping and Reporting Requirements

This proposed rule would require at-risk afterschool care centers to maintain a daily attendance roster, sign-in sheet or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found in § 226.17a(n) of this proposed rule.

This rule would not require at-risk afterschool care centers to maintain traditional enrollment records for the children who attend their afterschool care programs. This is in recognition that many afterschool care programs operate on a drop-in basis and do not have specific enrollment procedures and schedules for attendance. We are proposing to amend the definition of ''Enrolled child'' in § 226.2 to include this approach for at-risk afterschool care centers. All other types of facilities participating in the CACFP (i.e., day care homes, child care centers, outside-school-hours centers, and adult care centers) would continue to be required to have signed enrollment forms for each child or adult in care.

K. Monitoring Requirements

This rule proposes to require sponsors of at-risk afterschool care centers to monitor their centers three times a year.

Although they serve similar populations, sponsors of outside-school-hours care centers will still be required to monitor their centers six times a year (§ 226.16(d)(4)(iv)). We are evaluating whether to reduce the frequency for monitoring sponsored outside-school-hours care centers in the CACFP and expect to address this provision in an upcoming rule on CACFP management improvement. This provision for at-risk afterschool care centers is found at § 226.16(d)(4)(iii) and § 226.17a(p) of this proposed rule.

In addition, this rule proposes to require State agencies to conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit would be required during the first 90 days of the center's program operations. At the visit, the State agency would be required to examine meal pattern compliance. The State agency would also confirm the accuracy of the documentation submitted and used by the State agency to determine the eligibility of the center's afterschool care program and the center's area eligibility. These visits are expected to ensure that the new at-risk afterschool centers are off to a strong start. Without this new requirement, it would be possible under the current review requirements in § 226.6(l) that the State agency would not visit a new at-risk afterschool care center until its fourth year of operation. These provisions are found at § 226.6(l)(4) and § 226.17a(p) of this proposed rule.

Part 2—How Do the Afterschool Snack Components in the NSLP and CACFP Compare in This Proposed Rule?

The chart below summarizes the proposed requirements for afterschool care programs in the NSLP and CACFP and provides the regulatory citations established by this proposed rule. A more detailed discussion of some of the requirements follows in Part 3 of this preamble.

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	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Eligible institutions	School food authorities participating in the lunch component of the NSLP or Commodity School Program Participating schools/sites may be area eligible and claim all meals free. If a school/site is not area eligible, reimbursement would be based on each child's eligibility for free and reduced price meals.	§210.4a(a) §210.4a(n)	Institutions eligible to participate in the CACFP and which are located in an eligible area. (See "area eligibility" below.)	§226.2 (definition of "At-risk afterschool care center"); §226.17a(a)
Eligible afterschool care programs	(1) Is organized primarily to provide care for children after school when school is in session; (2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment); (3) Include education or enrichment activities; and (4) Are operated or sponsored by a school or school district Afterschool care programs do not include organized interscholastic athletic programs or community level competitive sports; however, programs may include sports as part of education or enrichment activities	§210.4a(b) §210.4a(a) §210.4a(b)	(1) Is organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year; (2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment); (3) Include education or enrichment activities; and (4) Are located in an "eligible area" Afterschool care programs do not include organized interscholastic athletic programs or community level competitive sports; however, programs may include sports as part of education or enrichment activities.	§226.17a(b)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Area eligibility	"Area eligible site" means a site located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals	§210.2 (definition of "Area eligible site")	"Eligible area" means the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals	§226.2 (definition of "Eligible area")
Licensing	No Federal requirement, although there may be State or local licensing requirements	Not applicable	Must meet State or local health and safety standards unless there is a Federal, State, or local requirement for licensing	§226.17a(a)(1)(iii); §226.6(d)(1)(iv) §226.17(b)(1)
Reimbursement	All snacks served in area eligible sites reimbursed at free rate; reimbursement for snacks served at other sites depends on the eligibility status of the child (i.e., free, reduced price or paid)	§210.4a(n)	All snacks served in at-risk afterschool care centers reimbursed at free rate	§226.17a(m)
Meal charges	The school food authority may set the price for paid afterschool snacks; maximum reduced price charge is 15 cents; Free afterschool snacks must be served at no charge	§210.4a(j)	All snacks must be served at no charge	§226.17a(i)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Eligible children	Students participating in an approved afterschool care program in a traditional school who either are age 18 or under at the start of the school year or meet the definition of a "Student with disabilities"; students participating in an approved afterschool care program who are enrolled in an RCCI must be age 18 or under at the start of the school year	§210.2 (definitions of "Child" and "Student with disabilities") and §210.4a(c)	Students enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of "Person with disabilities"	§226.2 (definitions of "Children" and "Person with disabilities") and §226.17a(c)
Meal requirements	Same as current meal supplement meal pattern (no nutrient analysis option); for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children;	§210.10(n)	Same as current supplemental food meal pattern; for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children	§226.20(a)(4) and (c)(4)
	No offer versus serve (authorized only for lunch service);	§210.10(n)		
	A la carte foods may be offered with the reimbursable snack; however, no foods of minimal nutritional value may be sold in the food service areas during the snack period	§210.11(b)		

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Meal service periods	Snacks must be served after a child's school day and only on days when school is in session (no weekends, holidays, or school vacations); may claim snacks served in approved afterschool care programs operated for children attending summer school	§210.4a(m)	Snacks must be served after a child's school day or on weekends, holidays, or school vacations during the regular school year including breaks in year-around schools; however, snacks cannot be served during a school's summer vacation	§226.17a(l)
Area eligibility determinations	On an annual basis, the school food authority must provide the State agency with an indication of which afterschool care program sites it wishes to claim area eligibility for, and with documentation which permits the State agency to establish whether the afterschool care program site is area eligible	§210.4a(e)	Based on information submitted by the sponsoring organization or independent at-risk afterschool care center, the State agency must make the initial area eligibility determination and must re-determine at least once every three years.	§226.17a(e); §226.15(g); and §226.6(f)(9)(v)
Afterschool care program eligibility determinations	The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information	§210.4a(e), (g)	The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information	§226.17a(e), (f) and §226.6(f)(12)
Agreement	Amend State agency-school food authority agreement to include afterschool snack component	§210.4a(f)	Enter into a new agreement with the State agency (if new to the CACFP) or amend existing agreement (if already participating in the CACFP)	Independent centers: §226.6(f)(1) (current regulations) and §226.15(i); sponsored centers: §226.16(f)

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Reporting and recordkeeping	School food authorities must provide State agencies with the number of snacks served, and, for the month of October, data on the number of schools and sites offering snacks under the NSLP School food authorities must maintain records as required under part 210, including daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance School food authorities must report middle schools and high schools in which 50 percent of the enrolled children are eligible for free or reduced price meals (currently school food authorities report elementary schools)	§210.4a(p) §210.4a(q) §210.15(a),(b)	At-risk afterschool care centers: (1) documentation of eligibility as an afterschool care program; (2) documentation of area eligibility; (3) daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance; (4) menus for each snack served; (5) number of snacks prepared or delivered for each meal service; (6) number of snacks served to children and to adults performing labor necessary to the food service for each meal service; (7) documentation that snacks are claimed only for children who are enrolled in an approved afterschool care program, in accordance with the center's licensed capacity, if applicable, and, for a proprietary title XX center, only in months in which the requirements for a proprietary title XX center are met	§226.17a(b)(1) and (d)(2) §226.17a(n)(1) §226.17a(a)(2)
Monitoring	School food authorities would be required to make comparisons of daily free, reduced price and paid snack counts against data so they can identify excessive snack counts. They also would be required to follow-up with sites identified as having excessive snack counts. School food authorities would have discretion to select the data used to perform edit checks.	§210.8(a)		

	NSLP AFTERSCHOOL SNACKS, AS PROPOSED		CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
	The school food authority must review each site's counting and claiming procedures and meal pattern compliance twice each school year; first review in the first six weeks of snack service each school year	§210.4a(s)	The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e., 1/3 each year, in each center at least once every four years)	Independent centers and sponsoring organizations: §226.6(l)(1) (in current regulations)
	The State agency must conduct an on-site review of at least 10%, but not less than 1 site, of a school food authority's afterschool snack sites to determine compliance with §210.4a	§210.19(a)(7)	The State agency must conduct a technical assistance visit to all newly participating independent at-risk afterschool care centers during the first 90-days of program operation.	Independent centers: §226.6(l)(4)
	The State agency must review afterschool snack component as part of any follow-up administrative reviews of school food authorities if not reviewed on initial administrative review	§210.18(i)(4)(iv)	The sponsoring organization must review sponsored at-risk afterschool care centers 3 times each year, including at least one review during the first six weeks of program operation and not more than 6 months between reviews.	Sponsored centers: §226.16(d)(4)(iii)

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Part 3—What Are the Program-Specific Issues?

This part highlights issues raised by the afterschool snack component that are program specific.

Section I. Issues Specific to the NSLP

A. Must the Afterschool Care Program Be Operated Directly by the School?

Under the proposal, a school seeking to participate in the NSLP afterschool snack component would participate through its school food authority (§ 210.4a(a)). There may be individual afterschool care programs sponsored by one or more schools under the jurisdiction of the school district or a single afterschool care program operated by the school district at one or more sites. At least one school in the school food authority would have to participate in the NSLP lunch component.

While the afterschool care program would be ''sponsored or operated'' by a school or school district, this does not mean that the school or school district would have to carry out the day-to-day management of the program. A school or school district could contract with another organization (such as the YWCA or a Boys and Girls Club) to manage the afterschool care program on its behalf. However, the school or school district would be required to retain overall administrative responsibility for the afterschool care program and the school food authority must retain administrative and fiscal responsibility for the snack service. Furthermore, the school food authority would be the party that enters into the agreement with the State agency and would assume full responsibility for meeting all program requirements.

B. Do the Point of Service Requirements Apply to the Afterschool Snack Component?

This proposed rule would not impose point of service count requirements (as discussed in Part 1.I.I of this preamble). However, accurate daily meal counts would continue to be required. State agencies may require point of service counts.

C. Does the Competitive Foods Requirement Apply?

This proposed rule would amend the competitive foods provision found at § 210.11(b) to extend the prohibition on the sale of foods of minimal nutritional value in food service areas to the afterschool snack periods.

D. May Schools Choose To Claim Snacks Through the CACFP Instead?

Under the proposal, schools may claim reimbursement for afterschool snacks either under the NSLP or CACFP. If a school claims afterschool snacks under the CACFP, the school would be required to meet all requirements for at-risk afterschool care centers, outside-school-hours care centers, or child care centers in that Program and keep CACFP records separate from the NSLP records. Afterschool snacks may not be claimed by CACFP at-risk afterschool care centers in the summer. Therefore, schools wishing to claim reimbursement for afterschool snacks served in afterschool care programs after summer school classes would do so: (1) Through the NSLP; (2) as a CACFP child care center or outside-school-hours care center; or (3) as an area eligible ''open site'' through the Summer Food Service Program (Refer to 7 CFR 225.2).

Section II. Issues Specific to the CACFP

A. What Would Be the Difference Between At-Risk Afterschool Care Centers and Outside-School-Hours Care Centers?

Prior to enactment of the Child Nutrition Reauthorization Act, organizations operating afterschool care programs could participate in the CACFP as either outside-school-hours care centers, or, if they also provided child care during the school day, as traditional child care centers with an afterschool care program. The new afterschool snack component adds another possibility—participation as an at-risk afterschool care center. Under this proposed rule, the main differences between participation as an outside-school-hours care center and an at-risk afterschool care center would be:

- All snacks served in at-risk afterschool care centers are reimbursed at the free rate; reimbursement in outside-school-hours care centers is based on the child's eligibility for free, reduced price, or paid meals;
- Snacks served to all children through age 18 may be reimbursed in at-risk afterschool care centers; only meals and snacks served to children through age 12 may be reimbursed in outside-school-hours care centers;
- At-risk afterschool care centers must be area eligible;
- Only one snack per child per day may be claimed by at-risk afterschool care centers; outside-school-hours care centers may claim two meals and one snack or one meal and two snacks per child per day;
- At-risk afterschool care centers may only receive reimbursement for snacks served after school; outside-school-hours care centers may receive reimbursement for meals and snacks served before and after school; and
- At-risk afterschool care centers may only receive reimbursement during the regular school year, including weekends and holidays; outside-school-hours care centers can receive reimbursement during periods of school vacation, including weekends, holidays, and summer.

The following chart compares the requirements for the existing afterschool care centers to the proposed at-risk afterschool care center requirements.

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CACFP

COMPARISON BETWEEN THE REQUIREMENTS FOR CACFP OUTSIDE-SCHOOL-HOURS CARE CENTERS AND AT-RISK AFTERSCHOOL CARE CENTERS, AS PROPOSED

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Eligible institutions	Public and private nonprofit organizations, proprietary title XX centers, and Iowa/Kentucky demonstration project centers	§226.2 (definition of "Outside-school-hours care center")	Same; except that facilities must be located in an eligible area	§226.2 (definitions of "At-risk afterschool care center" and "Eligible area")
Licensing	Must meet State or local health and safety standards unless there is a Federal, State or local requirement for licensing	§226.6(d)(1)	Same	§226.6(d)(1)
Reimbursement/ Area eligibility	Program may operate in any area; individual free and reduced price applications are taken to determine level of reimbursement (free, reduced price, and paid)	§226.19(b)(8)	Program must be located in an eligible area (i.e. the attendance area of a school in which 50 percent or more of the children enrolled are eligible for free or reduced price school meals); all snacks are reimbursed at the free rate	§226.2 (definition of "Eligible area"); §226.17a(b)(1)(iv), §226.17a(h) and 226.17a(m)
Eligible children	Children who are age 12 and under Children age 15 and under who are children of migrant workers Persons of any age who meet the definition of "Person with disabilities"	§226.2 (definition of "Children")	Students enrolled in an approved afterschool care program and who are age 18 or under at the start of the school year, including children of migrants; persons of any age who meet the definition of "Person with disabilities"	§226.2 (definitions of "Children" and "Person with disabilities"); §226.17a(c)
Types of meals eligible for reimbursement	Breakfast, snack, and supper (lunch may also be served under certain conditions)	§226.19(b)(4)	Snack only	§226.17a(j)

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Number of reimbursable meals	Maximum of two meals and one snack per child per day (or two snacks and one meal)	§226.19(b)(5)	Maximum of 1 snack per child per day	§226.17a(j)
Meal patterns	CACFP meal patterns	§226.20(a)(4), (c)(4)	CACFP snack patterns	§226.17a(k)
Meal service periods	School days, school vacation, including weekends and holidays; no weekend-only programs	§226.19(b)(4)	School days, weekends, holidays, and school vacations (except summer vacation) during the regular school year; weekend/holiday/ school break-only programs are permitted; no summer snack service except in year-round districts	§226.17a(l)
Time restrictions for meal service	Three hours must elapse between the beginning of one meal service and the beginning of another, except that four hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. In addition, the service of a supper must begin no later than 7 p.m., and end no later than 8 p.m.; the duration of the meal service is limited to 2 hours for lunch and supper, and 1 hour for other meals	§226.19(b)(6)	On school days, the snack must be served after school; on weekends, holidays, and school breaks, snack may be served at any time of day	§226.17a(l)

	OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS		AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE	
PROPOSED REQUIREMENT	DESCRIPTION	REGULATORY CITATION	DESCRIPTION	REGULATORY CITATION
Monitoring	The State agency must review independent outside-school-hours care centers and sponsoring organizations of independent outside-school-hours care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)	Independent centers: §226.6(l)(1)	The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)	Independent centers and sponsoring organizations: §226.6(l)(1) (in current regulations)
	The sponsoring organization must review sponsored outside-school-hours care centers six times each year, including at least one review during the first four weeks of program operations and not more than three months between reviews	Sponsored centers: §226.16(d)(4)(iv)	The State agency must conduct a technical assistance visit of all newly participating independent at-risk afterschool care centers during the first 90 days of program operation	Independent centers: §226.6(l)(4)
			The sponsoring organization must review sponsored at-risk afterschool care centers three times each year, including at least one review during the first six weeks of program operations and not more than six months between reviews	Sponsored centers: §226.16(d)(4)(iii)

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B. May For-Profit Organizations Participate as At-Risk Afterschool Care Centers?

A proprietary title XX center is a for-profit organization that provides nonresidential child care for which it receives funds under Title XX of the Social Security Act for not less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less. Under this proposal, a proprietary title XX center could participate in the CACFP as an at-risk afterschool care center, but only if it also participates as a child care center or an outside-school-hours care center.

Due to the drop-in nature of many afterschool care programs, children who only participate in the afterschool care program would not be counted in determining an organization's eligibility as a proprietary title XX center. This means that a for-profit organization seeking to serve as an at-risk afterschool care center could participate only if it qualifies as a proprietary title XX center based on the enrollment of its traditional child care program (i.e., the center receives funds under title XX of the Social Security Act for not less than 25 percent of the children enrolled in the traditional child care program). If the center qualifies as a proprietary title XX center, then it could claim reimbursement for snacks served in an at-risk afterschool care center if: (1) It operates an approved afterschool care program; (2) it is located in an eligible area; and (3) the snacks are served to eligible children after their school day. Similarly, private for-profit organizations participating in the Iowa/Kentucky demonstration projects under section 17(p) of the NSLA could serve as at-risk afterschool care centers, under the requirements described above.

C. Should the Children Participating in the At-Risk Afterschool Component Be Included in a Center's Enrollment for the Purpose of Determining the Claiming Percentage or Blended Rate?

Under this proposal, children who only participate in the at-risk afterschool component would not be counted as enrolled children for the purposes of determining claiming percentages/blended rates. Children who participate in both the at-risk snack component of the program and in at least one meal service of the traditional child care program at a center would be required to have signed income eligibility statements on file. Such children would be included in the center's enrollment for the purpose of determining claiming percentages/blended rates. We are proposing to amend § 226.9(b)(2) of the regulations to reflect this requirement.

Part 4—What Other Changes Does This Proposed Rule Make?

I. Terminology

As mentioned previously, this rule proposes to use the terms ''afterschool snack'' (for the NSLP) and ''snack'' (for the CACFP) rather than ''meal supplement'' in order to conform to the more commonly used terminology. We have proposed conforming changes throughout the NSLP and CACFP regulations, including the addition of the definition of ''Afterschool snack'' in § 210.2 and the definition of ''Snack'' in § 226.2.

II. CACFP Licensing

The Child Nutrition Reauthorization Act also revised the current CACFP licensing requirements in section 17(a)(1)(C) of the NSLA to facilitate CACFP participation of organizations that provide care outside of school hours. This applies both to outside-school-hours care centers and to the new at-risk afterschool care centers. Under the change, these centers are required to be licensed only if Federal, State, or local licensing is required. If licensing is not required, they must only meet State or local health and safety requirements. This change is found in § 226.6(d)(1)(vi) of this proposed rule.

III. Maximum Number of Meals

Section 708(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) amended section 17(f)(2)(B) of the NSLA (42 U.S.C. 1766(f)(2)(B)) to reduce the number of meals that may be claimed by participating centers in the CACFP. The statutorily revised maximum is two meals and one supplement and took effect August 22, 1996. State agencies were informed of this change in an August 13, 1996, memorandum. This proposed rule makes conforming changes throughout the CACFP regulations and clarifies that one meal and two supplements also satisfies the new limit.

IV. Correction to Part 235

The statute authorizing State administrative expense (SAE) funds does not reference the NSLP afterschool care component. Thus, State expenditures for the NSLP afterschool snack component will not ''earn'' SAE funds. However, the CACFP at-risk afterschool snack expenditures (which are made under section 17 of the NSLA) will. This proposed rule would correct an error in the SAE regulations that may cause confusion on this matter. Section 235.4(a)(1) incorrectly states that the amount of SAE funds allocated to each State agency is equal to one percent of the funds expended by the State in the second preceding fiscal year under sections 4 and 11 of the NSLA, and sections 3, 4, and 17A of the Child Nutrition Act of 1966. However, there is no section 17A in the Child Nutrition Act; therefore, this rule proposes to delete that reference. We wish to point out that this provision is taken directly from section 7(a)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(1)); that section does not contain the erroneous cite to section 17A of the Child Nutrition Act. Nor does that section reference funds expended under section 17A of the NSLA (the authorizing statute for the afterschool snack component in the NSLP).

Part 5—What Are the Implementation Dates?

The afterschool snack provisions of the Child Nutrition Reauthorization Act were made effective retroactive to October 1, 1998. To facilitate immediate implementation of these provisions, we provided guidance to State agencies on how to claim reimbursement for afterschool snacks under this new law.

Executive Order 12866

This proposed rule has been determined to be ''significant'' and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The Department has prepared a regulatory impact analysis which indicates an estimated USDA cost of $308 million over 5 years. The regulatory impact analysis can be obtained from Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule would not have a significant impact on a substantial number of small entities because of the optional nature of the snack service. Schools or institutions choose whether they wish to participate in this additional meal service. Because most schools or institutions that will choose to add a snack service are already participating in the NSLP or the CACFP, the snack service will not have a significant paperwork or reporting burden because it is incorporated under

the existing agreement and Claim for Reimbursement.

Executive Order 12372

The NSLP, SAE funds, and CACFP are listed in the Catalog of Federal Domestic Assistance Programs under 10.555, 10.560, and 10.558, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Since enactment of the Act in 1998, the Department informally consulted with State administering agencies, Program sponsors, and NSLP and CACFP advocates on ways to effectively implement the service of afterschool snacks. Discussions with State agencies took place at the Biennial State Directors' Meeting held in 1999 and at multiple State agency meetings held at various times throughout 1999 and 2000. Discussions with school food service personnel took place at various meetings sponsored by the American School Food Service Association and in a variety of other small and large group meetings.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the NSLP, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of SAE fund sanctions (7 CFR 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

In the CACFP, the administrative procedures are set forth at: (1) 7 CFR 226.6(k), which establishes appeal procedures; and (2) 7 CFR 226.22 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

This proposed rule contains paperwork burdens that are subject to review and approval by the Office of Management and Budget. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection contained in this proposed rule.

Written comments must be received on or before December 11, 2000. Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

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

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: 7 CFR part 210, National School Lunch Program.

OMB Number: 0584–0006.

Expiration Date: March 31, 2003.

Title: 7 CFR part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: May 31, 2001.

Title: 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: September 30, 2001.

Type of Request: Revision of currently approved collections.

Abstract: This rule proposes to codify the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the NSLP and the CACFP. Corresponding technical amendments are also proposed to the regulations governing the SAE Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

Provisions for operating the afterschool snack component are similar under the two programs, yet are distinguished enough to fit easily into the two larger programs, the NSLP or CACFP. For example, the afterschool snack component under both programs serves the same age group (ages 18 and under at the start of the school year) and must provide care that includes education or enrichment activities. On the other hand, the times that the component is available vary between the NSLP and CACFP. Under the NSLP, afterschool snacks may be provided only on days when school is in session, whereas afterschool snacks under the CACFP may be provided on weekends, holidays, or during vacations that occur during the regular school year. These similarities and differences illustrate how the afterschool snack component mirrors the features and goals of the larger programs.

By utilizing similar features of the ''parent'' program (*i.e.,* the NSLP or the CACFP), this proposed rule would place fewer new information collection burdens on State agencies and local program administrators than might have otherwise been necessary. Thus, we estimate that most of the reporting or recordkeeping burdens that normally would accompany a new program can be contained within existing burdens.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 3410–30–P

Estimated Annual Reporting Burden for 0584-0006, National School Lunch Program, 7 CFR 210

	7 CFR Part 210 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency provides to CACFP State agencies lists of elementary, middle, and high schools with 50% enrollment that is eligible for free or reduced price meals					
Existing Burden	§210.19(f)	12	1	.5	6
Proposed Burden	§210.19(f)	12	1	1.5	18
State agency prepares Grant Closeout Report					
Existing Burden	§210.25	58	2	3.2	371
Proposed Burden	§210.25	58	2	4.0	464
School food authority (SFA) reports the number of schools offering meals for October					
Existing Burden	§210.8(c)(2)	20,287	1	.08	1,623
Proposed Burden	§210.8(c)(2)	20,287	1	.09	1,826
SFA submits application to operate the afterschool snack program					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(e)	4,580	1	1	4,580
SFA submits claim for reimbursement					
Existing Burden	§210.8(c)	19,976	12	1.5	359,568
Proposed Burden	§210.8(c)	19,976	12	1.6	383,539
Schools take daily counts of snacks served.					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(q)	24,000	10	.03	7,200
Total Existing **Reporting** Burden for Part 210			1,126,120		
Total Proposed **Reporting** Burden for Part 210			1,162,179		
Difference Attributed to Proposed Rule			+36,059		

Estimated Annual Recordkeeping Burden for 0584-0006, National School Lunch Program, 7 CFR 210

	7 CFR Part 210 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency records which document details of all reviews and the degree of compliance with the critical and general areas of review to include documented corrective action and fiscal action take on file for review by FNS					
Existing Burden	§210.18(k),(p) §210.20(b)(6)	58	93.23	1.25	6,759
Proposed Burden	§210.18(k),(p) §210.20(b)(6)	58	93.23	1.30	7,030
Documentation by the State agency of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, CRE reviews, and USDA audits					
Existing Burden	§210.19(c), §210.18(p)	58	139	.33	2,660
Proposed Burden	§210.19(c), §210.18(p)	58	145	.33	2,775
SFA keeps documentation of participation data by school, each month's claim for reimbursement and all data used in the claims review process					
Existing Burden	§210.8(a), §210.15(b)(1)	3,442 16,807	12 12	10 8	413,040 1,613,472
Proposed Burden	§210.8(a), §210.15(b)(1)	3,442 16,807	12 12	10 8.25	413,040 1,663,893
Schools maintain daily meal menus and production records					
Existing Burden	§210.10(b), §210.15(b)(2) and (b)(3)	56,941	180	.25	2,562,345
Proposed Burden	§210.10(b), §210.15(b)(2) and (b)(3), §210.4a(l)	56,941	180	.28	2,869,826
Schools maintain records of daily counts of afterschool snacks served					
Existing Burden	none	0	0	0	0
Proposed Burden	§210.4a(p)	24,000	180	.01	43,200
Total **Recordkeeping** Existing Burden for Part 210			8,307,935		
Total Proposed **Recordkeeping** Burden for Part 210			8,709,423		
Difference Attributed to Proposed Rule			+401,488		

Estimated Annual Reporting Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226

	7 CFR Part 226 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency processes claims for reimbursement					
Existing Burden	§226.7(k)	54	1	1.79	97
Proposed Burden	§226.7(k)	54	1	1.83	99
Technical assistance visits to newly participating independent at-risk afterschool care centers					
Existing Burden	0	0	0	0	0
Proposed Burden	§226.6(l)(4)	47	15	0.5	352.5
Sponsor or independent institution submits documentation to demonstrate that child care centers, at-risk afterschool care centers, outside-school-hours care centers, day care homes, and adult day care centers are in compliance with licensing/approval criteria					
Existing Burden	§226.6(d), §226.6(e)	10,144	1	.3	3,043
Proposed Burden	§226.6(d), §226.6(e), §226.15(b)	10,759	1	.3	3,228
Sponsor or independent institution submits documentation to demonstrate that at-risk afterschool care centers meet eligibility and area eligibility requirements as part of application process at least once every three years and notify State agency of changes as necessary					
Existing Burden	§226.6(b)(11)	0	0	0	0
Proposed Burden	§226.15(g)	1,318	.3	1	395
Institutions enter into annual program agreement with State agencies by executing FNS-344					
Existing Burden	§226.6(f)(1)	283	1	.92	260
Proposed Burden	§226.6(f)(1)	898	1	.92	826
Sponsor or institution submits Claim for Reimbursement					
Existing Burden	§226.7(k)	283	12	2.29	7,777
Proposed Burden	§226.7(k)	898	12	2.29	24,677
Total Existing **Reporting** Burden for Part 226			4,413,645		
Total Proposed **Reporting** Burden for Part 226			4,432,045.5		
Difference Attributed to Proposed Rule			+18,400.5		

Estimated Annual Recordkeeping Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226

	7 CFR Part 226 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
State agency collects and maintains CACFP agreements, records received from applicant and participating institutions and documentation of administrative review and Program assistance activities, results, and corrective actions					
Existing Burden	§226.6	54	1	1.92	104
Proposed Burden	§226.6	54	1	1.96	106
Independent centers and sponsoring organizations of centers must ensure that family size and income, menus, meal counts, enrollment, invoices, and receipts, claims for reimbursement, day care licenses, CACFP applications, and tax exempt certifications (if applicable) are maintained on file for a period of 3 years. Sponsoring organizations of day care homes must ensure that menus, meal counts, attendance, enrollment, day care licenses, CACFP applications and providers' family size and income records are maintained for up to 3 years					
Existing Burden	§226.10(d), §226.15(e)	10,144	1	7.828	79,407
Proposed Burden	§226.10(d), §226.15(e), §226.17a(o)	10,759	1	7.828	84,221
Total Existing **Recordkeeping** Burden for Part 226			170,831		
Total Proposed **Recordkeeping** Burden for Part 226			175,647		
Difference Attributed to Proposed Rule			+4,816		

Estimated Annual Recordkeeping Burden for 0584-0026, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, 7 CFR 245

	7 CFR Part 245 Section	Annual Number of Respondents	Annual Frequency	Average Burden Per Response	Annual Burden Hours
SFAs notify parents in area eligible sites that all children attending afterschool care programs will receive free snacks					
Existing Burden	none	0	0	0	0
Proposed Burden	§245.5(a)(1)(ii)	4,580	1	.08	366
Total Existing **Recordkeeping** Burden for Part 245			369,782		
Total Proposed **Recordkeeping** Burden for Part 245			370,148		
Difference Attributed to Proposed Rule			+366		

BILLING CODE 3410–30–C

List of Subjects

7 CFR Part 210

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 226

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 235

Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 245

Civil rights, Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For reasons set forth in the preamble, 7 CFR Parts 210, 226, 235, and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751–1760, 1766a, 1769,1779.

2. In § 210.1:

a. Revise the last two sentences of paragraph (a); and

b. Remove the word ''lunches'' in the second sentence of paragraph (b) and add in its place the word ''meals''.

The revision reads as follows:

§ 210.1 General purpose and scope.

(a) * * * Pursuant to this Act, the Department provides States with cash assistance and donated foods to assist schools with serving nutritious meals to children each school day. To meet the Program's objectives, schools must serve meals that are nutritionally adequate in accordance with the applicable provisions of this part 210 to assist participating children with learning the relationship between proper eating habits and good health.

* * * * *

3. In § 210.2:

a. Remove the definitions of ''Afterschool care program'', ''Free lunch'', ''Reduced price lunch'', and ''Subsidized lunch'';

b. Add definitions for ''Afterschool snack'', ''Area eligibility'', ''Free meal'', ''Meal'', ''Paid meal'', and ''Reduced price meal'';

c. Revise the first sentence of the definition of ''Average Daily Participation'';

d. Revise paragraph (c) in the definition of ''Child'' and add a new paragraph (d);

e. Remove the words ''lunch program'' in the first sentence of the definition of ''Commodity School Program'' and add in their place the words ''school food service'';

f. Revise the definition of ''Donated foods'';

g. Remove the word ''meal'' in the second sentence of the definition of ''Menu item'' and add in its place the word ''lunch'';

h. Revise the definition of ''National School Lunch Program'';

i. Remove the reference to ''1954'' in the definition of ''Nonprofit'' and add in its place a reference to ''1986''; and

j. Remove the word ''lunches'' in the definition of ''Reimbursement'' and add in its place the word ''meals''.

The additions and revisions read as follows:

§ 210.2 Definitions.

* * * * *

Afterschool snack means a meal supplement that meets the meal pattern requirements specified in § 210.10(n).

Area eligibility means a determination that an afterschool care program site is located in a needy area as provided for in § 210.4a(i).

* * * * *

Average Daily Participation means the average number of children, by eligibility category, participating in the lunch service each operating day. * * *

Child means—* * * (c) for purposes of reimbursement for afterschool snacks in a ''School'', that term is defined in paragraphs (a) and (b) of the definition of that term, a student participating in an approved afterschool care program who is either age 18 or under at the start of the school year or is a student of any age who meets the definition of a ''Student with disabilities'' and who is participating in a school program as authorized by paragraph (a) of this definition; or (d) for purposes of reimbursement for afterschool snacks in a ''School'' as provided for in paragraph (c) of that definition, a student participating in an approved afterschool care program must be age 18 or under at the start of the school year.

* * * * *

Donated foods means food commodities donated by the Department for use in the National School Lunch Program or the Commodity School Program.

* * * * *

Free meal means a meal served under the Program to a child eligible for free meals under part 245 of this chapter or to a child participating in an approved afterschool care program at an area eligible site. Neither the child nor any member of the household may be required to pay or to work in order to receive the free meal.

* * * * *

Meal means food that meets the requirements for a lunch or an afterschool snack in § 210.10.

* * * * *

National School Lunch Program means the Program under which participating schools operate a nonprofit school food service in accordance with this part 210. The Program may include serving both lunches and afterschool snacks.

* * * * *

Paid meal means a meal served under the Program to a child who is either not eligible for or who elects not to receive free or reduced price meals under part 245 of this chapter.

* * * * *

Reduced price meal means a meal served under the Program to a child eligible for reduced price meals under part 245 of this chapter, for which the price is less than the school food authority's full price of the meal and which does not exceed the maximum allowable reduced price specified under part 245 of this chapter or in § 210.4a(j)(2). Neither the child nor any member of the household may be required to work in order to receive a reduced price meal.

* * * * *

4. In § 210.4:

a. Revise paragraph (a);

b. Add a new sentence at the end of paragraph (b)(2);

c. Revise paragraph (b)(3);

d. Remove paragraph (b)(4); and

e. Amend paragraph (c) introductory text by adding a new second sentence.

The revisions and additions read follows:

§ 210.4 Cash and donated food assistance to States.

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with this section to each State agency for meals served to children under the Program.

(b) * * *

(2) * * * FNS will provide additional donated foods for use in lunches and afterschool snacks when they are available.

(3) *Cash assistance* for afterschool snacks. (i) Cash assistance is provided to each State agency for all afterschool snacks served to children in accordance with the provisions of § 210.4a. The total cash assistance provided to a State agency may not exceed the lesser of:

(A) The amounts reported to FNS as paid to school food authorities in accordance with § 210.5(d)(3); or

(B) The total calculated by multiplying the number of afterschool snacks reported to FNS in accordance with § 210.5(d)(1) for each month during the fiscal year by the applicable rate.

(ii) The cash assistance rates for afterschool snacks are adjusted annually to reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers. These adjustments are announced by Notice in the **Federal Register** in July of each year and are effective on July 1 of each year.

(c) * * * FNS will also make cash assistance available to each State agency for afterschool snacks served in commodity schools in the same manner as it is provided in the National School Lunch Program. * * *

* * * * *

5. Add a new § 210.4a to read as follows:

§ 210.4a Afterschool snacks.

(a) *When is a school food authority eligible to receive reimbursement for afterschool snacks?* A school food authority is eligible to receive reimbursement for afterschool snacks when it has an agreement with the State agency for one or more schools to serve lunches under the National School Lunch Program and a school or school district operates or sponsors an eligible afterschool care program as provided in paragraph (b) of this section.

(b) *What is an eligible afterschool care program?* (1) *Eligible program.* For the purposes of paragraph (a) of this section, an eligible afterschool care program is one which:

(i) Is organized primarily to provide care for children after school;

(ii) Has organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment);

(iii) Includes education or enrichment activities; and

(iv) Is sponsored or operated by the school or school district.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *What are the eligibility requirements for children participating in an approved afterschool care program?*

(1) *Requirements for children in schools.* In schools, as provided for in paragraphs (a) and (b) of the definition of ''School'' in § 210.2, school food authorities may claim reimbursement for afterschool snacks served to children who meet the conditions in paragraph (c) of the definition of ''Child'' in § 210.2 . In such schools, a school food authority may claim reimbursement for a ''Student with disabilities'' (as defined in § 210.2) who is any age.

(2) *Requirements for children in residential child care institutions.* In residential child care institutions, as provided for in paragraph (c) of the definition of ''School'' in § 210.2, school food authorities may claim reimbursement for afterschool snacks served who meet the conditions in paragraph (d) of the definition of ''Child'' in § 210.2.

(d) *Must the afterschool care program be located in a school?* No. Any facility selected as a site of an eligible afterschool care program may participate in the afterschool snack service.

(e) *How does a school food authority apply for the afterschool snack component of the Program?*

(1) *Application.* An official of the school food authority must make written application to the State agency for any school or site in which it desires to operate an afterschool snack service under National School Lunch Program.

(2) *Required information.* At a minimum, the school food authority must submit:

(i) A description of how the afterschool care program meets the eligibility criteria in paragraph (b) of this section;

(ii) A list of all schools and/or sites;

(iii) An indication of which schools and/or sites the school food authority is requesting area eligibility for; and

(iv) Documentation which permits the State agency to confirm that schools and/or sites for which area eligibility is requested meet the criteria in paragraph (i)(1) of this section.

(f) *How does the State agency approve the application?*

(1) *State agency approval.* The responsibility for approval rests with the State agency. The State agency must evaluate the description(s) of the afterschool care program(s) to determine if they meet the criteria in paragraph (b) of this section. The State agency must review the documentation provided by the school food authority for any school or site requesting area eligibility.

(2) *Agreement.* Upon approval, the State agency amends the existing agreement between the State agency and the school food authority outlined in § 210.9. The amendment must describe the approved afterschool care program(s), list the approved sites and indicate whether they meet the criteria for area eligibility as provided for in paragraph (i)(1) of this section. The amendment must also require the school food authority to comply with the applicable requirements of this part 210 for the afterschool snack service.

(g) *What is the application process in subsequent years?* Prior to beginning afterschool snack service in each subsequent year, the school food authority must provide the information described in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for all schools and/or sites. The school food authority must also provide information about any substantive changes to the afterschool care program(s) to determine if it continues to meet the criteria in paragraph (e)(2)(i) of this section. The State agency reviews and approves the application and amends the agreement as discussed in paragraph (f) of this section.

(h) *What if school food authorities wish to add new at-risk afterschool care sites after application approval?* School food authorities wishing to add new afterschool care sites after application approval must provide the State agency with the information specified in paragraph (e) of this section. The State agency would then follow the procedures established under paragraph (f) of this section.

(i) *What is area eligibility?*

(1) *General.* A school is area eligible if at least 50 percent of its enrolled children are certified as eligible for free or reduced price meals or if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. A site is area eligible if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals.

(2) *Data used.* Area eligibility determinations must be based on the

total number of children approved for free and reduced price meals for the preceding October or another month the State agency has designated pursuant to § 210.9(b)(20). If the State agency decides to choose another month, it must do so for the entire State.

(j) *What may a school food authority charge for afterschool snacks?*

(1) *Free afterschool snacks.* School food authorities may not charge for afterschool snacks served to children who are eligible for free meals or who participate at an area eligible school or site.

(2) *Reduced price afterschool snacks.* School food authorities may charge no more than 15 cents for afterschool snacks served to children eligible for reduced price meals at non-area eligible schools or sites.

(3) *Paid afterschool snacks.* School food authorities may set the charge for afterschool snacks served to children from households who are not eligible for free or reduced price meals at non-area eligible sites.

(k) *How many snacks may be claimed for reimbursement?* School food authorities may claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced may be offered, but may not be claimed for reimbursement.

(l) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for afterschool snacks in § 210.10(n). If schools or sites offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks must be allowed to take any snack or choice offered as a part of the reimbursable snack. The afterschool snack must be priced as a unit.

(m) *When may snacks be served?* School food authorities may claim reimbursement only for afterschool snacks served in an afterschool care programs after a child's school day on days when school is in session. School food authorities may claim afterschool snacks served in approved afterschool care programs operated for children attending a summer school program which is an integral part of the curriculum or an actual extension of the local educational program. School food authorities may not claim afterschool snacks served on days when school is not in session (i.e. weekends, holidays, or school vacations).

(n) *What reimbursements do schools earn?*

(1) *At area eligible sites.* All afterschool snacks served in area eligible sites are reimbursed at the free afterschool snack rate.

(2) *At non-area eligible sites.* For afterschool snacks served in sites that are not area eligible, the reimbursement rate depends on the eligibility status of the child (i.e. free, reduced price, or paid).

(o) *How do schools determine eligibility status in non-area eligible sites?* School food authorities must determine and document the income eligibility (in accordance with part 245 of this chapter) of the children served in sites that are not area eligible. School food authorities may use the free and reduced price determinations made for purposes of free and reduced price lunches and/or breakfasts as documentation for free and reduced price afterschool snacks.

(p) *How do schools claim reimbursement?* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid afterschool snacks that are served to children eligible for free, reduced price and paid afterschool snacks for each day of operation. In order to obtain reimbursement for afterschool snacks, school food authorities must follow the procedures set forth in § 210.7 and § 210.8, as applicable.

(q) *What additional recordkeeping is required for the snack service?* In addition to the other records required by this part 210, school food authorities or schools must maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance.

(r) *What additional reporting is required for the snack service?* In addition to other reporting requirements under this part 210, school food authorities must submit a claim for reimbursement as specified in § 210.8.

(s) *What are the monitoring requirements for the school food authority?* Twice each school year, the school food authority must review each afterschool care program site's afterschool snack counting and claiming system and compliance with the afterschool snack meal pattern requirements. The first review must be made during the first six weeks of snack service each school year.

(t) *What are the monitoring requirements for State agencies?* State agency monitoring requirements are set forth in § 210.19(a)(7).

(u) *What are the other requirements for afterschool snacks?* School food authorities must comply with all applicable requirements in this part 210 except point of service counts as specified in § § 210.7(c)(1)(iii), 210.7(c)(2), and 210.9(b)(9)).

6. In § 210.5, revise the third sentence of paragraph (d)(1) to read as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(1) * * * For the month of October as of the last day of operation, the final report must include the total number of children approved for free lunches; the total number of children approved for reduced priced lunches; the total number of children enrolled in participating public schools, private schools, and residential child care institutions, respectively; and the total number of public schools/sites, private schools/sites and residential child care institutions, respectively, claiming reimbursements for meals under the National School Lunch Program. * * *

* * * * *

§ 210.6 [Amended]

7. In § 210.6, remove the words ''lunches and meals supplements'' in the first sentence and add in their place the word ''meals''.

8. In § 210.7:

a. Revise paragraph (a);

b. Revise the heading and first sentence of paragraph (b);

c. Revise the introductory text in paragraph (c);

d. Revise paragraph (c)(1) introductory text;

e. Revise paragraph (c)(1)(i);

f. Revise paragraph (c)(1)(ii) introductory text;

g. Revise paragraph (c)(1)(iii);

h. Revise paragraph (c)(1)(iv);

i. Revise paragraph (c)(1)(v); and

j. Revise paragraph (d).

The revisions read as follows:

§ 210.7 Reimbursement for school food authorities.

(a) *General.* Reimbursement payments to finance nonprofit school food service operations must be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(c), such payments may be made for meals served in accordance with provisions of this part 210 and part 245 of this chapter in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program. Reimbursement payments also include special cash assistance payments for free or reduced price lunches served to children

determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments will also be made for afterschool snacks served in approved afterschool care programs in accordance with § 210.4a.

(b) *Assignment of rates for lunch.* At the beginning of each school year, State agencies must establish the per meal rates of reimbursement for lunches for school food authorities participating in the Program. * * *

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid meals that are served to children eligible for free, reduced price and paid meals, respectively, for each day of operation.

(1) *Meal count system.* To ensure that the Claim for Reimbursement accurately reflects the number of meals, by eligibility category, served to eligible children for each day of operation, the school food authority must, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price meals based on the requirements prescribed under part 245 of this chapter;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price meals. The system must:

* * * * *

(iii) Base Claims for Reimbursement on meal counts, taken daily, that correctly identify the number of free, reduced price and paid lunches and afterschool snacks served to eligible children each day. For lunches, the counts must be taken daily, at the point of service, or in accordance with a point of service alternative authorized under paragraph (c)(2) of this section;

(iv) Correctly record, consolidate and report those lunch and afterschool snack counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess meals produced, as prohibited in § 210.10(a)(2) or non-Program meals (i.e., a la carte or adult lunches) or for more than one lunch and one afterschool snack per child per day.

* * * * *

(d) *Reimbursement for afterschool snacks.* State agencies must reimburse school food authorities for afterschool snacks at the rates set in § 210.4(b)(3).

9. In § 210.8:

a. Revise paragraph (a) introductory text;

b. Add a new sentence at the end of paragraph (a)(1);

c. Revise paragraph (a)(2) introductory text and paragraph (a)(2)(i) introductory text;

d. Remove the word ''meal'' in paragraphs (a)(2)(ii) and (a)(3)(ii) and add in its place the word ''lunch'';

e. Revise paragraph (a)(4);

f. Revise paragraph (b)(2) introductory text;

g. Revise the second sentence of paragraph (b)(2)(ii);

h. Remove the word ''lunch'' in paragraph (b)(3) and add in its place the word ''meal'';

i. Revise the first sentence of paragraph (b)(4);

j. Revise the second sentence of paragraph (c) introductory text;

k. Revise the second sentence of paragraph (c)(1);

l. Revise the first sentence of paragraph (c)(2); and

m. Revise the second sentence of paragraph (d).

The revisions and addition read as follows:

§ 210.8 Claims for reimbursement.

(a) *Internal controls.* The school food authority must establish internal controls which ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls for meal counting and claiming must include: An on-site review of the counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid meal counts against data which will assist in the identification of meal counts in excess of the number of free, reduced price and paid meals served each day to children eligible for such meals; and a system for following up on those meal counts which suggest the likelihood of counting problems.

(1) * * * On-site review requirements for afterschool snacks are set forth in § 210.4a(s).

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority must review the meal count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid lunches and afterschool snacks served on any day of operation to children currently eligible for such lunches and afterschool snacks.

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have no lunch counting and claiming violations may:

* * * * *

(4) *Follow-up activity.* The school food authority must promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2) of this section or the claims review process used by schools suggest the likelihood of meal count problems. When problems or errors are identified, the meal counts must be corrected prior to submission of the monthly Claim for Reimbursement. Improvements to the meal count system must also be made to ensure that the meal counting system consistently results in meal counts of the actual number of reimbursable free, reduced price and paid lunches and afterschool snacks served for each day of operation.

* * * * *

(b) * * *

(2) *State agency claims review process.* The State agency must review each school food authority's Claim for Reimbursement, on a monthly basis, in an effort to ensure that monthly claims are limited to the number of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(ii) * * * Such alternative analyses must meet the objective of ensuring that the monthly Claims for Reimbursement are limited to the numbers of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(4) *Corrective action.* The State agency must promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches and/or afterschool snacks served, by type, to eligible children. * * *

(c) * * * Such data must include, at a minimum, the number of free, reduced price and paid lunches and afterschool snacks served to eligible children. * * *

(1) * * * Unless otherwise approved by FNS, the Claim for Reimbursement for any month must include only lunches and afterschool snacks served in that month except if the first or last month of operation for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. * * *

(2) *October data.* For the month of October as of the last day of operation, the State agency must also obtain, either through the Claim for Reimbursement or

other means: the total number of children approved for free lunches; the total number of children approved for reduced price lunches; the total number of children enrolled in the school food authority and the total number of schools and sites claiming reimbursement for meals under the National School Lunch Program. * * *

(d) * * * Following the receipt of claims, the State agency must make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and afterschool snacks by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b). * * *

10. In § 210.9:

a. Revise paragraphs (b)(5) through (b)(7);

b. Revise the first sentence of paragraph (b)(8);

c. Revise paragraph (b)(9);

d. Remove the word ''lunches'' in first sentence of paragraph (b)(18) and add in its place the word ''meals'';

e. Revise paragraphs (b)(19) and (b)(20); and

f. Remove paragraph (c).

The revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in § 210.10; and serve snacks after the end of the school day which meet the applicable requirements in § 210.10;

(6) Price the lunch and afterschool snack as units;

(7) Serve meals free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under part 245 of this chapter and serve afterschool snacks free to all children at area eligible sites in accordance with § 210.4a(i);

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid meals served to eligible children in accordance with part 210. * * *

(9) Count the number of meals in accordance with § 210.7(c);

* * * * *

(19) Retain the individual applications for free and reduced price meals submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than December 31, provide the State agency with a list of all elementary, middle and high schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority must provide information on the boundaries of the attendance areas for the elementary, middle and high schools identified as having 50 percent or more of enrolled children certified for free or reduced price meals. Each school food authority must provide this information when available for the schools under its jurisdiction, and upon the request of:

(i) At-risk afterschool care center;

(ii) Sponsoring organization of at-risk afterschool care centers; or

(iii) A sponsoring organization of day care homes participating in the Child and Adult Care Food Program.

11. In § 210.10, revise paragraph (n) to read as follows:

§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?

* * * * *

(n) *What are the requirements for afterschool snacks?* (1) *Minimum components.* In order to be reimbursed, afterschool snacks must contain two different components from the following four:

(i) A serving of fluid milk, as defined in paragraph (m)(1)(ii) of this section, as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and must not be used as meat alternates due to their low protein content. Nut or seed meals or flours must not be used as a meat alternate except as defined under appendix A to this part: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(2) *Afterschool snacks for infants.* Afterschool snacks for infants must contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of breast milk or iron-fortified infant formula or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the afterschool snacks as desired.

(3) *Minimum quantities.* In order to be reimbursed, afterschool snacks must contain the following quantities of the required components. (Note: Juice may not be served when milk is served as the only other component.) Children older than age 12 may be served larger portions based on the greater food needs of older boys and girls, but must be served no less than the minimum quantities specified for children age 6 through 12.

Afterschool Snack Chart for Children

Components (Select two different components from the four listed)	Ages 1 and 2	Ages 3 through 5	Ages 6 through 12
Milk, fluid	4 ounces	4 ounces	8 ounces
Meat or meat alternate [4]	½ ounce	½ ounce	1 ounce
Juice or fruit or vegetable	½ cup	½ cup	¾ cup
Bread and/or cereal: enriched or whole grain bread or	½ slice	½ slice	1 slice
Cereal: cold dry or	¼ cup[1]	1/3 cup[2]	¾ cup[3]
hot cooked	¼ cup	¼ cup	½ cup

[1] ¼ cup (volume) or 1/3 ounce (weight), whichever is less.
[2] 1/3 cup (volume) or ½ ounce (weight), whichever is less.
[3] 3/4 cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.
Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

Afterschool Snack Chart for Infants

Birth through three months	Four months through seven months	Eight months through eleven months
4-6 fluid ounces breast milk [2,3] or formula[1]	4-6 fluid ounces breast milk [2,3] or formula[1]	2-4 fluid ounces breast milk [2,3] formula,[1] or fruit juice.[4] 0-½ slice bread [5] or 0-2 crackers [5]

[1] Infant formula must be iron fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.
[4] Fruit juice must be full-strength.
[5] Bread and bread alternates must be made from whole grain or enriched meal or flour. A serving of this component must be optional.

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§ 210.11 [Amended]

12. In § 210.11:

a. Remove the word "lunch" and add the word "meal" in its place in paragraph (a)(1); and

b. In paragraph (b):

(i) Remove the word "lunches" and add in its place the word "meals" in the first sentence;

(ii) Remove the word "lunch" and add in its place the word "meal" in the second sentence; and

(iii) Remove the words "lunch period" and add in their place the words "meal periods" in the third sentence.

13. In § 210.15, revise paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) * * *

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(a)(2) and one afterschool snack per child per day under § 210.4a;

(4) Currently approved and denied applications for free and reduced price meals and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with § 245.6a of this chapter.

14. In § 210.16:

a. revise the second sentence in paragraph (a); and

b. revise the first sentence in paragraph (b)(1).

The revisions read as follows:

§ 210.16 Food service management companies.

(a) * * * However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable meals to all eligible children. * * *

* * * * *

(b) * * *

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10 to be used as a standard for the purpose of basing bids or estimating average cost per lunch and/or afterschool snack. * * *

* * * * *

15. In § 210.18:

a. revise paragraph (i)(4)(iv);

b. revise the second sentence of paragraph (l)(2); and

c. revise the last sentence of paragraph (l)(4).

The revisions read as follows:

§ 210.18 Administrative reviews.

* * * * *

(i) * * *

(4) * * *

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the School Breakfast Program (part 220) and/or the Special Milk Program for Children (part 215) or the afterschool snack service (§ 210.4a) in those schools selected for the administrative review and participating in those Programs, the State agency must do so for those schools selected for the first follow-up review.

* * * * *

(1) * * *

(2) * * * Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. * * *

* * * * *

(4) * * * Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

* * * * *

16. In § 210.19:

a. Remove the word ''lunches'' and add the word ''meals'' in its place in the fifth sentence of paragraph (a)(2);

b. Add a new paragraph (a)(7);

c. Revise paragraph (c)(2)(i);

d. Revise the last sentence of paragraph (c)(2)(ii);

e. Revise paragraph (c)(2)(iii); and

f. Revise paragraph (f).

The revisions and addition read as follows:

§ 210.19 Additional responsibilities.

(a) * * *

(7) *Compliance with afterschool snack requirements.* Each State agency shall determine whether school food authorities claiming reimbursement for afterschool snacks comply with the provisions of § 210.4a. Each State agency shall conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews may be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

* * * * *

(c) * * *

(2) * * *

(i) The State agency must identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under § 210.7. In order to take fiscal action, the State agency must identify accurate counts of reimbursable lunches and afterschool snacks through available data, if possible. In the absence of reliable data, the State agency must reconstruct the lunch and afterschool snack counts in accordance with procedures established by FNS.

(ii) * * * The State agency must ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under § 210.18 and prior to the implementation of corrective action, is limited to meals eligible for reimbursement under this part 210.

(iii) In taking fiscal action, State agencies must assume that children determined by the reviewer to be incorrectly approved for free and reduced price meals participated at the same rate as correctly approved children in the corresponding category.

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency must provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary, middle, and high schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October, or another month specified by the State agency. Lists must be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency must provide the current list, upon request, to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers or sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

17. In § 210.23, revise paragraph (a) to read as follows:

§ 210.23 Other responsibilities.

(a) *Free and reduced price meals.* State agencies and school food authorities must ensure that meals are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price meals is to be made in accordance with part 245 of this chapter.

* * * * *

18. In § 210.24, revise the last sentence to read as follows:

§ 210.24 Withholding payments.

* * * Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 is revised to read as follows:

Authority: 42 U.S.C. 1758, 1759a, 1765, and 1766.

2. In part 226:

a. Remove the words ''supplement'' or ''supplements'' wherever they appear in

the following sections and add the words ''snack'' or ''snacks'', respectively, in their place:

§ 226.4(b)(7);
§ 226.4(b)(8);
§ 226.4(b)(9);
§ 226.13(b);
§ 226.15(e)(4);
§ 226.17(b)(8);
§ 226.19(b)(4);
§ 226.19(b)(6);
§ 226.19a(b)(9);
§ 226.20(b)(4) introductory text;
§ 226.25(g)(1)(i)(C); and

b. remove the words ''supplemental food'' wherever they appear in the following sections and add the word ''snacks'' in their place:

§ 226.20(a)(4);
§ 226.20(b)(1)(iii)
§ 226.20(b)(2)(iii);
§ 226.20(b)(3)(iii);
§ 226.20(c)(4); and
§ 226.20(d)(2).

3. In § 226.2:

a. Add new definitions of ''At-risk afterschool care center'', ''Eligible area'', ''Iowa/Kentucky demonstration project center'', ''Person with disabilities'', and ''Snack'' in alphabetical order;

b. Revise the definitions of ''CACFP child care standards'', ''Child care facility'', ''Children'', ''Nonpricing program'', ''Pricing program'', ''Proprietary title XX center'', ''Reduced price meal'', and ''Sponsoring organization'';

c. Add a new sentence to the end of the definition of ''Enrolled child'';

d. Revise the first sentence in the definition of ''Free meal'';

e. Add the words ''at-risk afterschool care center,'' in the definition of ''Independent center'' after the words ''child care center,'';

f. Add the words ''at-risk afterschool care center,'' in the definition of ''Institution'' after the words ''child care center,''; and

g. Add the words ''in accordance with § 226.6(d)(1)'' in the first sentence of the definition of ''Outside-school-hours care center'' after the words ''licensed or approved''.

The new definitions and revisions read as follows:

§ 226.2 Definitions.

* * * * *

At-risk afterschool care center means a public or private nonprofit organization (or a proprietary title XX center, as defined in this section) eligible to participate in the CACFP that provides nonresidential child care to children after school through an approved afterschool care program in an eligible area. An at-risk afterschool care center may participate in the Program as an independent center or under the auspices of a sponsoring organization.

CACFP child care standards means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers and day care homes by the State agency under the provisions of § 226.6(d)(2) and (d)(3).

* * * * *

Child care facility means a child care center, day care home, at-risk afterschool care center, or outside-school-hours care center under the auspices of a sponsoring organization.

Children means:

(a) Persons age 12 and under;

(b) Persons age 15 and under who are children of migrant workers;

(c) ''Person with disabilities'' as defined in this section; and

(d) For at-risk afterschool care centers, students who are enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or who are any age and meet the definition of ''Person with disabilities'' as defined in this section.

* * * * *

Eligible area means the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals.

Enrolled child * * * For at-risk afterschool care centers, ''enrolled child'' means a child participating in an approved afterschool care program.

* * * * *

Free meal means a meal served under the Program to: a participant from a family that meets the income standards for free school meals; a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC recipiency; a child who is a Head Start participant; a child participating in an approved at-risk afterschool care program; or an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. * * *

* * * * *

Iowa/Kentucky demonstration project center means any private for-profit center:

(a) Providing nonresidential child care;

(b) In which at least 25 percent of the enrolled children or 25 percent of the licensed capacity, whichever is less, meet the income eligibility criteria for free or reduced price meals. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage; and

(c) Participating in the demonstration project under section 17(p) of the National School Lunch Act.

* * * * *

Nonpricing program means an institution, child care facility, or adult day care facility in which there is no separate identifiable charge made for meals served to participants.

* * * * *

Person with disabilities means a person of any age who has one or more disabilities, as determined by the State agency, and who is enrolled in an institution or child care facility serving a majority of persons who are age 18 and under.

* * * * *

Pricing program means an institution, child care facility, or adult day care facility in which a separate identifiable charge is made for meals served to participants.

* * * * *

Proprietary title XX center means:

(a) Any private, for profit center which provides nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX child care beneficiaries were at least 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month before initial application or annual reapplication for Program participation. (Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage); or

(b) Any private, for profit center which provides nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX adult beneficiaries were at least 25 percent of enrolled eligible participants during the calendar month before initial application or annual reapplication for Program participation.

Reduced price meal means a meal served under the Program to a participant from a family which meets the income standards for reduced price school meals. Any separate charge imposed must be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a snack. Neither the participant nor any member of his family may be required to work

in the food service program for a reduced price meal.

* * * * *

Snack means a meal supplement which meets the meal pattern requirements specified in § 226.20(a)(4).

Sponsoring organization means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

(a) One or more day care homes;

(b) A child care center, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(c) Two or more child care centers, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(d) Any combination of child care centers, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term ''sponsoring organization'' also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary title XIX or XX centers, as defined in this section.

* * * * *

4. In § 226.4:

a. Revise paragraph (a);

b. Redesignate paragraphs (c) through (j) as paragraphs (d) through (k), respectively;

c. Add a new paragraph (c);

d. Remove the word ''supplements'' wherever it appears in newly redesignated paragraphs (d)(7) through (d)(9), and add in its place the word ''snacks'';

e. Revise the first sentence of newly redesignated paragraph (h)(2).

The revisions and addition read as follows:

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS must make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part 226. Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), and (i) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part 226 must not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (i) and (k) of this section.

* * * * *

(c) *At-risk afterschool care center funds.* For snacks served to children in at-risk afterschool care centers, funds will be made available to each State agency in an amount equal to the total calculated by multiplying the number of snacks served in the Program within the State to such children by the national average payment rate for free snacks under section 11 of the National School Lunch Act.

* * * * *

(h) * * *

(2) The rate for snacks served in child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. * * *

* * * * *

5. In § 226.6:

a. Revise paragraph (b)(7);

b. Remove the first sentence and add three sentences in its place in paragraph (b)(8);

c. Add a new paragraph (b)(11);

d. Revise the heading of paragraph (d) and paragraph (d)(1) introductory text;

e. Remove the period at the end of paragraph (d)(1)(v) and add in its place the word ''; or'';

f. Add a new paragraph (d)(1)(vi);

g. Remove the words ''and outside-school-hours care centers'' in paragraph (d)(2)(i)(A)(*2*);

h. Remove paragraph (d)(2)(ii);

i. Revise the second sentence of paragraph (d)(3) and paragraph (f)(9);

j. Add new paragraphs (f)(12) and (l)(4); and

k. Remove the words '', outside-school-hours care centers,'' and ''outside-school-hours care center,'' wherever they appear in paragraph (n).

The additions and revisions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(7) Submission of documentation that all child care centers, at-risk afterschool care centers, adult day care centers, outside-school-hours care centers and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act. Each such center must also certify that at least 25 percent of its enrolled children or 25 percent of its licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

(11) For at-risk afterschool care centers:

(i) Documentation sufficient to determine if each afterschool care program meets the eligibility requirements in § 226.17a(a);

(ii) Information about any substantive changes to the afterschool care program whenever such changes occur (even if the changes do not affect the eligibility of the afterschool care program); and

(iii) Documentation of area eligibility at least once every three years thereafter.

* * * * *

(d) *Licensing/approval for child care centers, at-risk afterschool care centers, outside-school hours care centers and day care homes.* * * *

(1) *General.* Each State agency must establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, at-risk afterschool care centers and outside-school hours care centers and day care homes either:

* * * * *

(vi) If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards.

* * * * *

(3) * * * Licensing or approval is not available when no Federal, State, or local licensing/approval standards have been established for child care centers or day care homes; or no mechanism exists to determine compliance with licensing/approval standards. * * *

* * * * *

(f) * * *

(9) The State agency must comply with the requirements of this paragraph (f) for tiering and at-risk afterschool center area eligibility determinations.

(i) *General.* Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary, middle,

and high schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals.

(ii) *Tiering data.* The State agency must provide the list of elementary schools to sponsoring organizations of day care homes by February 15 each year unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency also must provide each sponsoring organization of day care homes with census data (as provided to the State agency by FNS upon its availability on a decennial basis) showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals.

(iii) *Tiering determinations.* The State agency must ensure that the most recent available data is used when the determination of a day care home's eligibility as a tier I day care home (as defined in § 226.2) is made using elementary school or census data. Determinations of a day care home's eligibility as a tier I day care home are valid for one year if based on a provider's household income, three years if based on elementary school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency may not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data during the three-year period.

(iv) *Area eligibility data.* The State agency must provide the list of elementary, middle, and high schools to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request.

(v) *At-risk afterschool care center area eligibility determinations.* The State agency must determine the area eligibility for each independent at-risk afterschool care center. The State agency must use the most recent data available pursuant to paragraph (f)(9)(i) of this section. The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year. Area eligibility determinations are valid for three years. However, the State agency, a sponsoring organization, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible. The State agency may not routinely require redeterminations of area eligibility based on updated school data during the three-year period.

* * * * *

(12) Determine whether the afterschool care programs of at-risk afterschool care centers meet the requirements of § 226.17a(a) before the centers begin participating in the Program and whenever information on changes to the afterschool care programs is submitted or otherwise becomes available. The determinations must be based on information submitted by the sponsoring organization or, for independent centers, by the at-risk afterschool care centers.

* * * * *

(l) * * *

(4) *Technical assistance visits to independent at-risk afterschool care centers.* In addition to these reviews, State agencies must conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit must be made during the first 90 days of program operations. At the visit, the State agency must confirm the accuracy of the documentation provided by the at-risk afterschool care center and used by the State agency to determine eligibility. The State agency must also examine meal pattern compliance.

* * * * *

6. In § 226.7, revise paragraph (f) to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(f) *Rate assignment.* Each State agency must require institutions (other than at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations for day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

* * * * *

§ 226.8 [Amended]

7. In § 226.8, remove the references to ''§ 226.4(h)'' in the first sentence of paragraph (b), the first sentence of paragraph (c), and the first and second sentences of paragraph (d), and add in their places references to ''§ 226.4(i)''.

8. In § 226.9:

a. Add a new second sentence in paragraph (a);

b. Revise paragraph (b) introductory text; and

c. Revise paragraph (b)(2).

The addition and revisions read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

(a) * * * However, no rates should be assigned for at-risk afterschool care centers. * * *

(b) Except for at-risk afterschool care centers, the State agency must either:

* * * * *

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced price, and paid meals. Children who only participate in the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of claiming percentages; or

* * * * *

9. In § 226.10, revise the third sentence of paragraph (c) and add a new fourth sentence to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(c) * * * Independent proprietary title XX child care centers and independent proprietary title XX at-risk afterschool care centers must submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

10. In § 226.11:

a. Revise the section heading, and paragraphs (a), (b) and (c); and

b. Add a heading to paragraphs (d) and (e).

The revisions and additions read as follows:

§ 226.11 Program payments for child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers.

(a) *Requirement for agreements.* Payments must be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, at-risk afterschool care centers, adult

day care centers and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) *Institution reporting.*—(1) *Child and adult care institutions.* Each child care institution and each adult day care institution must report each month to the State agency the total number of Program meals, by type (breakfasts, lunches, suppers, and snacks), served to children or adult participants, respectively, except as provided in paragraph (b)(2) of this section.

(2) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(c) *Reimbursement.*—(1) *Child and adult care institutions.* Each State agency must base reimbursement to each approved child care institution and adult day care institution on the number of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(3) of this section.

(2) *At-risk afterschool care institutions.* Each State agency must base reimbursement to each at-risk afterschool care institution on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(3) of this section.

(3) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(4) *Computation of reimbursement.* Except for at-risk afterschool care centers, in computing reimbursement, the State agency must either:

(i) *Actual counts.* Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants eligible to receive free meals, participants eligible to receive reduced price meals, and participants not eligible for free or reduced price meals by the applicable national average payment rate; or

(ii) *Claiming percentages.* Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(iii) *Blended rates.* Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) *Limits on reimbursement.* * * *

(e) *Institution recordkeeping.* * * *

11. In § 226.15:

a. Revise paragraphs (b)(4) and (b)(6);

b. Remove paragraph (e)(5) and redesignate paragraphs (e)(6) through (e)(14) as paragraphs (e)(5) through (e)(13), respectively; and

c. Redesignate paragraphs (g) through (k) as paragraphs (h) through (l), respectively, and add a new paragraph (g).

The revisions and addition read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) * * *

(4) If an independent child care center, independent at-risk afterschool care center or independent outside-school hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

* * * * *

(6) For each proprietary title XX child care center and proprietary title XX at-risk afterschool care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations must provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction.

* * * * *

(g) *Area eligibility determinations for at-risk afterschool care centers.* Sponsoring organizations of at-risk afterschool care centers must provide information, as required by the State agency, which permits the State agency to determine whether the centers they sponsor are located in eligible areas. Such information may include the most recent free and reduced price school data available pursuant to § 226.6(f)(9) and attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

* * * * *

12. In § 226.16:

a. Remove the word ''and'' at the end of paragraph (d)(4)(ii), redesignate paragraph (d)(4)(iii) as paragraph (d)(4)(iv) and add a new paragraph (d)(4)(iii); and

b. Revise paragraphs (f) and (h).

The addition and revisions read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(iii) Three times each year at each at-risk afterschool care center, provided at least one review is made during each at-risk afterschool care center's first six weeks of Program operations and not more than six months elapse between reviews; and

* * * * *

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, at-risk afterschool care centers, day care

homes, adult day care centers and outside-school-hours care centers).

* * * * *

(h) Sponsoring organizations must make payments of program funds to child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers within five working days of receipt from the State agency. These payments must be made on the basis of the management plan approved by the State agency. In addition, payments must not exceed the Program costs documented at each facility during any fiscal year, except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements must not exceed the rates times the number of meals documented at each facility during any fiscal year.

* * * * *

13. In § 226.17:

a. Revise paragraph (b)(1) introductory text;

b. Revise paragraph (b)(3);

c. Add in the second sentence of paragraph (b)(4), the words ''(excluding children receiving snacks in an approved afterschool care program),'' after the words ''enrolled children''; and

d. Revise paragraph (b)(5)

The revisions read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(1) Child care centers (except for at-risk afterschool care centers and outside-school-hours care centers) must have Federal, State, or local licensing or approval to provide day care services to children. If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

* * * * *

(3) Each child care center participating in the Program must serve one or more of the following meal types: breakfast; lunch; supper; and snack. Reimbursement may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

* * * * *

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded. A child care center with preschool children may also be approved to serve a snack to school age children enrolled in an afterschool care program meeting the requirements of § 226.17a which is distinct from its day care program for preschool children, provided the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

* * * * *

14. Add a new § 226.17a to read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) *When is an organization eligible to receive reimbursement for afterschool snacks?*

(1) *Eligible organizations.* In order to be eligible to receive reimbursement, organizations must meet all of the following criteria.

(i) Organizations must meet the definition of an ''at-risk afterschool care center'' in § 226.2. An organization may participate in the Program either as an independent center or under the auspices of a sponsoring organization. Independent centers must comply with the provisions of § 226.15. Public and private nonprofit centers may not participate under the auspices of a for-profit sponsoring organization.

(ii) Organizations must operate an eligible afterschool care program, as described in paragraph (b) of this section.

(iii) Organizations must meet the licensing/approval requirements in § 226.6(d)(1).

(iv) Except for proprietary title XX centers, at-risk afterschool care centers must be public, or have tax-exempt status under the Internal Revenue Code of 1986 or be currently participating in another Federal program requiring nonprofit status.

(2) *Limitations.* At-risk afterschool care centers may only claim reimbursement for snacks served to children who are participating in an approved afterschool care program. In addition, such centers may only claim reimbursement for snacks served at any one time to children within the at-risk afterschool care center's authorized capacity, and for snacks served at a proprietary title XX center during a calendar month in which at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage.

(b) *What is an eligible at-risk afterschool care program?*

(1) *Eligible program.* To be eligible for reimbursement, an afterschool care program must:

(i) Be organized primarily to provide care for children after school or on weekends, holidays, or school vacations (except summer vacation) during the regular school year;

(ii) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment);

(iii) Include education or enrichment activities; and

(iv) Be located in an eligible area, as described in paragraph (h) of this section.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *What are the eligibility requirements for children?* At-risk afterschool care centers may claim reimbursement only for snacks served to children who participate in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of ''Person with disabilities'' in § 226.2.

(d) *How does an organization apply to be an at-risk afterschool care center?*

(1) *Application.* An official of the organization must make written application to the State agency for any afterschool care program which it wants to operate as an at-risk afterschool care center.

(2) *Required information.* At a minimum, an organization must submit:

(i) An indication that the applicant organization meets the eligibility criteria for organizations as specified in paragraph (a) of this section;

(ii) A description of how the afterschool care program(s) meets the eligibility criteria in paragraph (b) of this section;

(iii) In the case of a sponsoring organization, a list of all applicant afterschool care centers;

(iv) Documentation which permits the State agency to confirm that all applicant afterschool care centers are

located in an eligible area, as described in paragraph (h) of this section.

(e) *How does the State agency approve the application?*

(1) *State agency approval.* In addition to establishing applicant eligibility (in accordance with §§ 226.6(b), 226.15(b), and 226.16(b)), the State agency must determine the eligibility of the afterschool care program for each sponsored afterschool care center based on the information submitted by the sponsoring organization (see § 226.6(f)(12)). The State agency must determine the eligibility of the afterschool care programs of independent afterschool care centers (see § 226.6(f)(12)). An approved organization must enter into an agreement with the State agency as described in paragraph (e)(2) of this section.

(2) *Agreement.* The State agency must enter into an agreement or amend an existing agreement with an approved at-risk afterschool care center pursuant to § 226.6(f)(1). The amendment must describe the approved afterschool care program and list the approved centers. The amendment must also require the at-risk afterschool care center to comply with the applicable requirements of this part.

(f) *What is the application process in subsequent years?* In addition to renewing applicant eligibility (as described in §§ 226.6(b), 226.15(b), 226.16(b)), the independent at-risk afterschool care center or sponsoring organization must advise the State agency of any substantive changes to the afterschool care program consistent with the timeframes described in paragraph (h)(2) of this section.

(g) *What if sponsoring organizations want to add new at-risk after school care centers after application approval?* Sponsoring organizations that want to add new at-risk afterschool care centers must provide the State agency with the information sufficient to demonstrate its compliance with the requirements of this section.

(h) *What is ''area eligibility''?* In order to receive reimbursement for snacks served in at-risk afterschool care centers, such centers must be located in an ''Eligible area'' as defined in § 226.2.

(1) *Definition.* An at-risk afterschool care center is in an ''eligible area'' when it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals.

(2) *Data used.* Area eligibility determinations must be based on the total number of children approved for free and reduced price school meals for the preceding October, or another month designated by the State agency that administers the National School Lunch Program, pursuant to § 210.9(b)(20) of this chapter. If the State agency chooses a month other than October, it must do so for the entire State. Area eligibility determinations are valid for three years from the beginning of the month in which the determination was made.

(i) *May an at-risk afterschool care center charge for a snack?* No, all afterschool snacks served under this section must be made available to participating children at no charge.

(j) *How many snacks may be claimed for reimbursement?* At-risk afterschool care programs may claim reimbursement only for one afterschool snack per child per day. A center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the afterschool snack. All meals and any snacks in addition to one snack per child per day must be claimed in accordance with the requirements for the applicable component of the Program.

(k) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for snacks in §§ 226.20(a)(4) and (c)(4).

(l) *When may snacks be served?* At-risk afterschool care centers may claim only snacks served in approved afterschool care programs after a child's school day or on weekends, holidays, or school vacations (except summer vacation) during the regular school year.

(m) *What reimbursements do at-risk afterschool care centers earn?* All snacks served in at-risk afterschool care centers will be reimbursed at the free snack rate.

(n) *What additional recordkeeping is required for at-risk afterschool care centers?* In addition to the other records required by this part, at-risk afterschool care centers must maintain:

(1) Daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance;

(2) The number of snacks prepared or delivered for each snack service;

(3) The number of snacks served to participating children for each snack service; and

(4) Menus for each snack service.

(o) *What additional reporting is required for the snack service?* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of snacks served to eligible children.

(p) *What are the monitoring requirements for at-risk afterschool care centers?* State agencies must monitor independent centers in accordance with § 226.6(l). Sponsoring organizations of at-risk afterschool care centers must monitor their centers in accordance with § 226.16(d)(4)(iii).

15. In § 226.18, revise paragraph (c) to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(c) Each day care home must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one meal and two snacks, provided daily to each child.

* * * * *

16. In § 226.19, revise paragraph (b)(1) and (b)(5) to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(1) For purposes of Program participation, outside-school-hours care centers must have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours only if Federal, State or local licensing or approval is otherwise required. If Federal, State or local licensing or approval is not otherwise required, outside-school-hours care centers must meet State or local health and safety standards. The main purpose of the center must be the care and the supervision of children. In cases where Federal, State or local licensing or approval is required, outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied.

* * * * *

(5) Each outside-school-hours care center participating in the Program must claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child. In addition, reimbursement may not be claimed for meals served to children who are not enrolled, or meals served to children at any one time in excess of authorized

capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

* * * * *

17. In § 226.19a, revise paragraph (b)(5) to read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(5) Each adult day care center participating in the Program must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one snack and two meals, provided daily to each adult participant.

* * * * *

§ 226.20 [Amended]

18. In § 226.20(b)(4), remove the words ''Supplement (snack)'' in the table and add in their place the word ''Snack''.

19. In § 226.23:

a. Revise the first sentence in paragraph (b);

b. Revise paragraph (c)(6);

c. Revise the second and third sentences of paragraph (d); and

d. Add in the first sentence of paragraph (e)(1)(i), the words ''other than at-risk afterschool care centers'' after the word ''institutions''.

The revisions read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(b) At-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which elect to serve meals at no separate charge, must develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or handicap and that there is no discrimination in the course of the food service. * * *

(c) * * *

(6) An assurance that the charges for a reduced price lunch or supper will not exceed 40 cents, that the charge for a reduced price breakfast will not exceed 30 cents, and that the charge for a reduced price snack will not exceed 15 cents.

(d) * * * All media releases issued by institutions other than at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes, must include the Secretary's Income Eligibility Guidelines for Free and Reduced Price Meals. The release issued by all at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers and sponsoring organizations of day care homes, and by other institutions which elect not to charge separately for meals, must announce the availability of meals at no separate charge. * * *

* * * * *

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for 7 CFR part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

2. In § 235.4, revise the first sentence of paragraph (a)(1) and paragraph (b)(3)(iii) to read as follows:

§ 235.4 Allocation of funds to States.

(a) * * *

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. * * *

* * * * *

(b) * * *

(3) * * *

(iii) The ratio of the number of free and reduced price lunches served in school food authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price lunches served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FNS for reviews conducted under § 210.18 of this chapter.

* * * * *

PART 245—DETERMINING ELIGIBLITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for 7 CFR part 245 continues to read as follows:

Authority: 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751–60.

2. In § 245.1, revise the second sentence of paragraph (a) to read as follows:

§ 245.1 General purpose and scope.

(a) * * * Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price breakfasts, lunches, and afterschool snacks and, at the option of the School Food Authority for schools participating only in the Special Milk Program, free milk to eligible children.

* * * * *

3. In 245.2, revise paragraphs (f) and (g) to read as follows:

§ 245.2 Definitions.

* * * * *

(f) *Meal* means a lunch, afterschool snack, or breakfast which meets the applicable requirements in § 210.10 and § 220.8 of this chapter.

* * * * *

(g) *Reduced price meal* means a meal which meets all of the following criteria:

(1) The price must be less than the full price of the meal;

(2) The price must not exceed 40 cents for a lunch, 30 cents for a breakfast, and 15 cents for afterschool snacks; and

(3) Neither the child nor any member of his family must be required to supply an equivalent value in work for the school or the school's food service.

* * * * *

4. In § 245.5, redesignate paragraphs (a)(1)(ii) through (a)(1)(xi) as paragraphs (a)(1)(iii) through (a)(1)(xii) and add a new paragraph (a)(1)(ii) to read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(ii) In schools participating in the afterschool snack meal service in area eligible sites, an explanation that all children attending the afterschool care program will receive free snacks;

* * * * *

§ 245.8 [Amended]

5. In § 245.8(e), remove the words ''lunch or breakfast'' and add in their place the words ''lunch, breakfast, or

6. In § 245.9, revise paragraph (a) introductory text to read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

(a) A school food authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price lunches may, at its option, authorize the school to reduce annual certification and public

notification for those children eligible for free meals to once every two consecutive school years. This alternative is known as Provision 1 and the following requirements must apply:

* * * * *

7. In § 245.11, revise the second sentence of paragraph (a)(1) to read as follows:

§ 245.11 Action by State agencies and FNSROs.

(a) * * *

(1) * * * If the State agency elects to establish a maximum price for reduced price lunches, breakfasts, or afterschool snacks in all schools that is less than the maximum charge permitted under this part, the State agency must establish the price in its prototype policy. * * *

* * * * *

Dated: September 22, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 00–25817 Filed 10–10–00; 8:45 am]

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Federal Register

Wednesday,
October 11, 2000

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, Parts 2, 4, et al. Federal Acquisition Circular 97–20; Introduction and Federal Acquisition Regulations: Veterans Entrepreneurship and Small Business Development Act of 1999, Truth in Negotiations Act Threshold, and Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–20; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–20. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–20 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Veterans Entrepreneurship and Small Business Development Act of 1999	2000–302	Moss.
II	Truth in Negotiations Act Threshold	2000–300	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–20 amends the FAR as specified below:

Item I—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This interim rule—

- Defines the terms ''veteran-owned small business concerns'' and ''service-disabled veteran-owned small business concerns;''
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9; and
- Amends the SF 294 and SF 295 to add data collection requirements for subcontract awards to veteran-owned small businesses and service-disabled veteran-owned small business concerns.

Item II—Truth in Negotiations Act Threshold (FAR Case 2000–300)

This final rule amends FAR 15.403–4 to increase the threshold for obtaining cost or pricing data from $500,000 to $550,000. This implements the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

Dated: October 3, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–20 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–20 are effective October 11, 2000.

Dated: October 3, 2000.

Col. R.D. Kerrins, Jr., USA

Acting Director, Defense Procurement.

Dated: October 3, 2000.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: October 2, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–25873 Filed 10–10–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, 7, 19, 52, and 53

[FAC 97–20; FAR Case 2000–302; Item I]

RIN 9000–AI93

Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). The Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses.

DATES: *Effective Date:* October 11, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 11, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405

Submit electronic comments via the Internet to: farcase.2000–302@gsa.gov. Please submit comments only and cite FAC 97–20, FAR case 2000–302 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97-20, FAR case 2000–302.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. Specifically, the Act—

1. Defined the terms ''small business concern owned and controlled by veterans'' and ''small business concern owned and controlled by service-disabled veterans;''
2. Established that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
3. Established a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9;
4. Established a 3 percent Governmentwide goal (based on the total value of all prime contract and subcontract awards) for participation by service-disabled veteran-owned small businesses; and
5. Added data collection requirements for prime and subcontract awards to veteran-owned small businesses and service-disabled veteran-owned small business concerns.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule now expands the small business program by identifying new subgroups of small entities (i.e., veteran-owned small businesses and service-disabled veteran-owned small businesses) for prime contracting and subcontracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule amends the Federal Acquisition Regulation in order to comply with recently enacted legislation concerning small business concerns owned and controlled by veterans and service-disabled veterans. It implements section 501(c), section 502(a)(2), and section 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). It is estimated that there are 4 to 5.5 million small businesses owned and controlled by veterans and 100,000 to 300,000 small businesses owned and controlled by service-disabled veterans. Section 604(d) of Title VI of the Act adds data collection requirements to the Federal Procurement Data System for prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. This rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objectives.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–20, FAR case 2000–302), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Two existing OMB clearances are affected by this rule as follows:

Annual Reporting Burden for OMB Clearance 9000–0006

We estimate the public reporting burden for this collection of information to average 50.54 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.

We estimate the annual reporting burden is as follows:

Respondents: 4,253.
Responses per respondent: 3.44.
Total annual responses: 14,631.
Preparation hours per response: 50.54.
Total response burden hours: 739,389.

Annual Reporting Burden for OMB Clearance 9000–0007

We estimate the public reporting burden for this collection of information to average 15.9 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.

We estimate the annual reporting burden is as follows:

Respondents: 4,253.
Responses per respondent: 1.67.
Total annual responses: 7,098.
Preparation hours per response: 15.9.
Total response burden hours: 112,864.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than December 11, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

We particularly invite public comments on: whether this collection of information is necessary for the proper performance of functions of the FAR, and 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.

Requester may obtain a copy of the justifications from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Numbers 9000–0006 or 9000–0007 in all correspondence.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator

of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 4, 5, 7, 19, 52, and 53

Government procurement.

Dated: October 3, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 5, 7, 19, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 7, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Service-disabled veteran-owned small business concern'' and ''Veteran-owned small business concern'' to read as follows:

2.101 Definitions.

* * * * *

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.602 by revising paragraph (a)(2); and in paragraph (d) by removing ''shall'' each time it is used (three times) and adding ''must'' in its place. The revised text reads as follows:

4.602 Federal Procurement Data System.

(a) * * *

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

4. Amend section 5.002 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and by revising paragraph (c) to read as follows:

5.002 Policy.

* * * * *

(c) Assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

PART 7—ACQUISITION PLANNING

5. Amend section 7.105 in the introductory paragraph by removing ''shall'' each time it is used (four times) and adding ''must'' in its place; and by revising the third sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action*—(1) *Sources.* * * * Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19), and the impact of any bundling that might affect their participation in the acquisition (see 7.107) (15 U.S.C. 644(e)). * * *

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

6. Amend section 19.000 in paragraph (a)(9) by removing ''and''; in paragraph (a)(10) by removing the period and adding ''; and'' in its place; and by adding paragraph (a)(11) to read as follows:

19.000 Scope of part.

(a) * * *

(11) The use of veteran-owned small business concerns and service-disabled veteran-owned small business concerns.

* * * * *

19.001 [Amended]

7. Amend section 19.001 in the definition ''Small disadvantaged business concern'' by removing ''52.212–3(c)(2)'' and adding ''52.212–3(c)(4)'' in its place; and by removing ''52.212–3(c)(7)(ii)'' and adding ''52.212–3(c)(9)(ii)'' in its place.

19.201 [Amended]

8. Amend section 19.201 in the first sentence of paragraph (a) by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''; and in the second sentence by removing ''shall'' and adding ''must'' in its place.

19.202–2 [Amended]

9. Amend section 19.202–2 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''.

19.202–4 [Amended]

10. Amend section 19.202–4 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''.

19.202–5 [Amended]

11. Amend section 19.202–5 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and in paragraphs (a) and (b) by adding ''veteran-owned small business, service-disabled veteran-owned small business,'' before the word ''HUBZone''.

Subpart 19.3—Determination of Small Business Status for Small Business Programs

12. The heading of subpart 19.3 is revised to read as set forth above.

19.301 [Amended]

13. Amend section 19.301 in the first sentence of paragraph (d) by adding ''veteran-owned small business,'' before the word ''HUBZone''.

19.304 [Amended]

14. Amend section 19.304 in paragraph (b) by removing ''52.212–3(c)(2)'' and adding ''52.212–3(c)(4)'' in its place; and in paragraph (c) by removing ''52.212–3(c)(7)'' and adding ''52.212–3(c)(9)'' in its place.

19.402 [Amended]

15. Amend section 19.402 in paragraph (c)(1)(ii) by adding ''veteran-owned small, service-disabled veteran-owned small,'' before the word ''HUBZone''.

16. Amend section 19.702 by revising the introductory paragraph to read as follows:

19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

17. Amend section 19.703 by revising the introductory text of paragraph (a), paragraph (a)(1) and the first sentence of paragraph (b); in the fifth sentence of paragraph (b) by removing ''shall'' and adding ''must'' in its place; and adding a sixth sentence to paragraph (b). The revised and added text reads as follows:

19.703 Eligibility requirements for participating in the program.

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or woman-owned small business concern, a concern must meet the appropriate definition in 2.101 or 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a woman-owned small business concern. * * * Protests challenging HUBZone small business concerns status must be filed in accordance with 13 CFR 126.800.

18. Amend section 19.704 by revising paragraph (a)(1); and in paragraphs (a)(2), (a)(3), (a)(6), (a)(8), and (a)(11) by adding ''veteran-owned small business,'' before the word ''HUBZone''. The revised text reads as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(1) Separate percentage goals for using small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required;.

* * * * *

19.705–2 [Amended]

19. Amend section 19.705–2 in the introductory paragraph by removing ''shall'' and adding ''must'' in its place; and in the last sentence of paragraph (d) by removing ''shall'' and adding ''must'' in its place, and adding ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''.

20. Amend section 19.705–4 by—

a. Removing from the introductory paragraph ''shall'' and adding ''must'' in its place;

b. Adding in the second and last sentences of paragraph (c), and paragraphs (d)(1) and (d)(5) ''veteran-owned small business,'' before the word ''HUBZone''; and

c. Revising paragraph (d)(6) to read as follows:

19.705–4 Reviewing the subcontracting plan.

* * * * *

(d) * * *

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals. The contracting officer should ensure that the contractor has considered the use of service-disabled veteran-owned small businesses in developing its veteran-owned small business goal (see 19.704(a)(1) and 52.219–9(d)(1)).

* * * * *

19.705–7 [Amended]

21. Amend section 19.705–7 in paragraph (a) by adding in the first sentence ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''; and in the third and fourth sentences of paragraph (d) by adding ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''.

19.706 [Amended]

22. Amend section 19.706 in paragraphs (b) and (c) by adding ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''.

19.708 [Amended]

23. Amend section 19.708 in paragraphs (c)(1), (c)(2), and (c)(3) by adding ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

24. Amend section 52.212–3 by—

a. Revising the date of the provision;

b. Adding in paragraph (a), in alphabetical order, the definitions ''Service-disabled veteran-owned small

business concern'' and ''Veteran-owned small business concern'';

c. Redesignating paragraphs (c)(2) through (c)(7) as (c)(4) through (c)(9), respectively, and adding new paragraphs (c)(2) and (c)(3);

d. Removing from the ''Note'' paragraph in newly designated paragraph (c)(5), ''(c)(4) and (c)(5)'' and adding ''(c)(6) and (c)(7)'' in its place;

e. Removing from Alternate I ''(*Oct 1998*)'' and adding ''(*Oct 2000*)'' in its place, and removing ''(c)(8)'' and adding ''(c)(10)'' in its place; redesignating paragraph ''(8)'' as ''(10)'' and removing ''(c)(7)'' and adding ''(c)(9)'' in its place;

f. Removing from Alternate II ''(*Oct 1998*)'' and adding ''(*Oct 2000*)'' in its place, and removing ''(c)(7)(iii)'' and adding ''(c)(9)(iii)'' in its place; and

g. Removing from Alternate III ''(*Jan 1999*)'' and adding ''(*Oct 2000*)'' in its place, and removing ''(c)(9)'' and adding ''(c)(11)'' in its place; designating the second paragraph of Alternate III as paragraph (c)(11); and removing from newly designated paragraph (c)(11)(ii) ''(c)(9)(i)'' and adding ''(c)(11)(i)'' in its place.

The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Oct. 2000)

(a) * * *

* * * * *

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service—disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

(c) * * *

(2) *Veteran-owned small business concern.* [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

* * * * *

25. Amend section 52.219–1 by—

a. Revising the date of the provision;

b. Adding paragraphs (b)(4) and (b)(5);

c. Revising the heading of paragraph (c) and adding, in alphabetical order, the definitions ''Service-disabled veteran-owned small business concern'' and ''Veteran-owned small business concern'';

d. Removing '', as used in this provision,'' from the definitions ''Small business concern'' and ''Women-owned small business concern'';

e. Adding in the introductory text of paragraph (d)(2) ''HUBZone small,'' after the word ''small,'' the first time it appears;

f. Removing from Alternate I ''(*Nov 1999*)'' and adding ''(*Oct 2000*)'' in its place, removing ''(b)(4)'' and adding ''(b)(6)'' in its place; redesignating paragraph (4) as paragraph (b)(6); removing from newly designated paragraph (b)(6)(ii) ''(b)(4)(i)'' and adding ''(b)(6)(i)'' in its place; and

g. Removing from Alternate II ''(*Nov 1999*)'' and adding ''(*Oct 2000*)'' in its place, and removing ''(b)(5)'' and adding ''(b)(7)'' in its place; and redesignating paragraph (5) of Alternate II as paragraph (b)(7). The revised text reads as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (Oct. 2000)

* * * * *

(b) * * *

(4) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(5) [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(c) *Definitions.* As used in this provision—

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

26. Amend section 52.219–8 by revising the date of the clause and paragraphs (a), (c), and (d) to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (Oct. 2000)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

* * * * *

(c) *Definitions.* As used in this contract—

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

27. Amend section 52.219–9 by—

a. Revising the date of the clause;

b. Adding to the first and second sentences of paragraph (c) ''veteran-owned small business,'' before the word ''HUBZone'';

c. Revising paragraph (d)(1);

d. Redesignating paragraphs (d)(2)(iii) through (d)(2)(v) as (d)(2)(iv) through (d)(2)(vi), and adding a new (d)(2)(iii);

e. Redesignating paragraphs (d)(3)(ii) through (d)(3)(iv) as (d)(3)(iii) through (d)(3)(v), and adding a new paragraph (d)(3)(ii);

f. Revising paragraph (d)(5);

g. Redesignating paragraphs (d)(6)(ii) through (d)(6)(iv) as (d)(6)(iii) through (d)(6)(v), and adding a new paragraph (d)(6)(ii);

h. Adding to paragraph (d)(8) ''veteran-owned small business,'' before the word ''HUBZone'';

i. Revising paragraph (d)(10)(iii);

j. Adding to the introductory text of paragraph (d)(11), (d)(11)(i), and (d)(11)(ii) ''veteran-owned small business,'' before the word ''HUBZone'';

k. Redesignating paragraphs (d)(11)(iii)(B) through (d)(11)(iii)(E) as (d)(11)(iii)(C) through (d)(11)(iii)(F), and adding a new paragraph (d)(11)(iii)(B);

l. Removing from paragraph (d)(11)(iv)(B) the word ''and''; removing the period at the end of (d)(11)(iv)(C) and adding ''; and'' in its place; and adding new paragraph (d)(11)(iv)(D);

m. Adding in paragraphs (e)(1) (twice), (e)(2), (e)(3), and (e)(4) ''veteran-owned small business,'' before the word ''HUBZone'';

n. Removing from Alternate I ''(*Jan 1999*)'' and adding ''(*Oct 2000*)'' in its place; and by adding ''veteran-owned small business,'' before the word ''HUBZone'' (twice) in paragraph (c) of the Alternate; and

o. Removing from Alternate II ''(*Jan 1999*)'' and adding ''(*Oct 2000*)'' in its place; and by adding ''veteran-owned small business,'' before the word ''HUBZone'' (twice) in paragraph (c) of the Alternate. The revised text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (Oct. 2000)

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) * * *

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

* * * * *

(3) * * *

(ii) Veteran-owned small business concerns;

* * * * *

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.,* existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.,* outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) * * *

(ii) Veteran-owned small business concerns;

* * * * *

(10) * * *

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

* * * * *

(11) * * *

(iii) * * *

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

* * * * *

(iv) * * *

(D) Veterans service organizations.

* * * * *

(End of clause)

52.219–10 [Amended]

28. Amend section 52.219–10 by revising the date of the clause to read ''(Oct 2000)''; by adding in paragraph (a)

''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone''; and by adding in paragraph (b) ''veteran-owned small business (including service-disabled veteran-owned small business),'' before the word ''HUBZone'', and adding a comma following ''goals for small business''.

PART 53—FORMS

53.219 [Amended]

29. Amend section 53.219 in paragraphs (a) and (b) by removing ''(*Rev. 12/98*)'' and adding ''(Rev. *10/00*)'' in their place.

30. Revise sections 53.301–294 and 53.301–295 to read as follows:

BILLING CODE 6820–EP–P

53.301–294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No.: 9000-0006
Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED
4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR
5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ GSA ☐ NASA
☐ NAVY ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ DEFENSE LOGISTICS AGENCY

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Include SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and Service-Disabled VOSB) *(Dollar Amount and Percent of 10c)*				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*				
14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of 10c.)*				
15. VETERAN-OWNED SMALL BUSINESS *(Include Service-Disabled Veteran Owned SB) (Dollar Amount and Percent of 10c.)*				

16. REMARKS

17a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN
17b. TELEPHONE NUMBER — AREA CODE | NUMBER

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 294 (REV. 10-2000)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. **This report is not required from small businesses.**

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) **Test Program for Negotiation of Comprehensive Subcontracting Plans.** The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. **A separate report is required for each contract at contract completion.** Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. **Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.**

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. **Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.**

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. **Credit cannot be taken for awards made to lower tier subcontractors.**

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. **A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7.** A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 15: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 16. The amounts entered in Blocks 10a through 15 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs and HUBZone SBs. **For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.**

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 15: Each of these items is a subcategory of Block 10a. **Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women or veterans).**

BLOCK 11: Report all subcontracts awarded to SDBs (including **women-owned, veteran-owned, and HUBZone SB SDBs).** For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms **(including SDBs, VOSB's, and HUBZone SBs owned by women).**

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, and SDB HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including Service-Disabled VOSBs (include VOSBs that are also SDBs, WOSBs and HUBZone SBs.).

BLOCK 16: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSBs, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

53.301–295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

OMB No.: 9000-0007
Expires: 09/30/2003

Public reporting burden for this collection of information is estimated to average 12.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD:
☐ OCT 1 - MAR 31 ☐ APR 1 - SEPT 30 YEAR

5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

	ARMY		DEFENSE LOGISTICS AGENCY		DOE
	NAVY		NASA		OTHER FEDERAL AGENCY *(Specify)*
	AIR FORCE		GSA		

7. REPORT SUBMITTED AS *(Check one)*

	PRIME CONTRACTOR
	SUBCONTRACTOR
	BOTH

8. TYPE OF PLAN

	INDIVIDUAL	IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY.
	COMMERCIAL PRODUCTS	

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES

a | b

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report cumulative figures for reporting period in Block 4)

	TYPE	WHOLE DOLLARS	PERCENT (To nearest tenth of a %)
10a.	SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and Service-Disabled VOSB) (Dollar Amount and Percent of 10c.)*		
10b.	LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)*		
10c.	TOTAL *(Sum of 10a and 10b.)*		100.0%
11.	SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)*		
12.	WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)*		
13.	HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)*		
14.	HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of10c.)*		
15a.	VETERAN-OWNED SMALL BUSINESS (VOSB) CONCERNS *(Dollar Amount and Percent of10c.)*		
15b.	SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of10c.)*		

16. REMARKS

17. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM

a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

18. CHIEF EXECUTIVE OFFICER

a. NAME | c. SIGNATURE

b. TITLE | d. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 295 (REV. 10-2000)
Prescribed by GSA - FAR (48 CFR) 53.219(b)

GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business, and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3. This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5. If a prime contractor/subcontractor is performing work for more than one Federal agency, **a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over** $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6. **For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors.** However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8. **Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.**

9. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. **Credit cannot be taken for awards made to lower tier subcontractors.**

10. See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. **A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting.** A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: **Check only one.** Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 15b attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 15b: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which thereport is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commerical" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 15b: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSB firms (including SDBs, VOSBs, and HUBZone SBs owned by women).

BLOCK 13: (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, and SDB HUBZone SBs).

BLOCK15a: Report all subcontracts awarded to VOSBs (including women-owned, SDB, and HUBZone SB VOSBs).

BLOCK 15b: Report all subcontracts awarded to service disabled VOSBs (these subcontracts should also be reported in Block 15a).

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS.

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall **be submitted in addition to the required reports for other-than-commercial items, if any.**

3. Enter in Blocks 10a through 15b the total of all subcontract awards under the contractor's Commercial Plan. **Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted.** This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546

2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 10-2000) BACK

[FR Doc. 00–25874 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 97–20; FAR Case 2000–300; Item II]

RIN 9000–AI83

Federal Acquisition Regulation; Truth in Negotiations Act Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

DATES: *Effective Date:* October 11, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–20, FAR case 2000–300.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 15.403–4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The increase of $50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product deflators from the fiscal year 2001 budget.

DoD, GSA, and NASA published a proposed rule in the Federal Register at 65 FR 41267, July 3, 2000. Two respondents submitted public comments. The Councils considered all public comments in formulation of the final rule. This final rule is the same as the proposed rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts and subcontracts with small entities do not require the submission of cost or pricing data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not significantly change the existing information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000–0045.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 3, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.403–4 by revising paragraph (a)(1) to read as follows:

15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403–1(b)(4). The threshold for obtaining cost or pricing data is $550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.,* a $200,000 modification resulting from a reduction of $400,000 and an increase of $200,000 is a pricing adjustment exceeding $550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

* * * * *

[FR Doc. 00–25875 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the

Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–20 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–20 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–20

Item	Subject	FAR case	Analyst
I	Veterans Entrepreneurship And Small Business Development Act *	2000–302	Moss.
II	Truth in Negotiations Act Threshold	2000–300	Olson.

Item I—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This interim rule—

- Defines the terms ''veteran-owned small business concerns'' and ''service-disabled veteran-owned small business concerns'';
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9; and
- Amends the SF 294 and SF 295 to add data collection requirements for subcontract awards to veteran-owned small businesses and service disabled veteran-owned small business concerns.

Item II—Truth in Negotiations Act Threshold (FAR Case 2000–300)

This final rule amends FAR 15.403–4 to increase the threshold for obtaining cost or pricing data from $500,000 to $550,000. This implements the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

Dated: October 3, 2000.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–25876 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday,
October 11, 2000

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 135
Service Difficulty Reports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 28293; Amendment No. 135–78]

RIN 2120–AF71

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on September 15, 2000 (65 FR 56192). That final rule amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures malfunctions, and defects of aircraft engines, systems, and components. In that final rule the FAA neglected to make conforming amendments to sections not amended by the final rule.

EFFECTIVE DATES: Effective on January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Jose E. Figueroa, AFS–300, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591, telephone (703) 661–0522.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) published in the **Federal Register** of September 15, 2000 (65 FR 56192) a document that amended the regulations on reporting service difficulties. The FAA neglected to include a revision to 14 CFR 135.411 to clearly address the applicability of one newly adopted section to part 135 operations. When the provisions of § 135.415 were expanded into revised § 135.415 and new § 135.416, the appropriate changes to § 135.411 were not made to reflect the existence of the new § 135.416. The only change in this amendment is to add a reference to new § 135.416 to existing § 135.411 in two places. This document makes the appropriate amendatory change to clearly reflect that new § 135.416 as well as current §§ 134.415 and 135.417 apply to all operations under part 135. This amendment will not impose any additional restrictions on operators affected by these regulations.

Technical Amendment

The technical amendment will correct the omission of § 135.416 from the applicability paragraphs of § 135.411.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 135 is amended as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation of part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

2. Amend § 135.411 by revising the first sentence of paragraph (a)(1) and paragraph (a)(2) to read as follows:

§ 135.411 Applicability.

(a) * * *

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under parts 91 and 43 of this chapter and §§ 135.415, 135.416, 135.417, and 135.421. * * *

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415. 135.416. 135.417, and 135.423 through 135.443.

* * * * *

Issued in Washington, DC on October 3, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 00–25951 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Wednesday,
October 11, 2000

Part V

Commodity Futures Trading Commission

17 CFR Part 30

Foreign Futures and Options Transactions; Final Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; Interpretative statement.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is clarifying its interpretation of the foreign futures or foreign options secured amount requirement set forth in Commission Rule 30.7 (''secured amount requirement''). The Commission previously interpreted Rule 30.7 to require futures commission merchants (''FCMs'') and certain firms exempt from such registration to perform an inquiry with respect to the treatment of the foreign futures or foreign options secured amount by any depository handling those funds. Under that interpretation, if a firm determines that any depository, including those beyond the initial depository, would not hold the funds set aside to cover the secured amount in a manner consistent with the provisions of the rule, then the firm must set aside funds with an acceptable depository in order to include such funds in the daily computation of the secured amount. As part of the Commission's ongoing program of regulatory reform, the Commission is revising its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation set forth herein is a revised appendix to our Rules.

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The current Appendix B to Part 30 sets forth option contracts permitted to be offered or sold in the U.S. pursuant to Rule 30.3(a).[1] The Commission previously amended Rule 30.3(a) to eliminate the requirement that the Commission authorize the offer and sale of a particular foreign exchange-traded commodity option before it can be offered or sold in the U.S., except for those involving stock indices or foreign government debt futures.[2] That action rendered existing Appendix B to Part 30 generally irrelevant. Accordingly, the Commission proposed to remove the current Appendix B and replace it with the Interpretative Statement to Rule 30.7 contained herein.[3]

The Commission received one favorable comment on the proposed Interpretative Statement. The commenter noted that ''the extra requirements imposed by the current interpretation effectively compel FCMs to choose between becoming insurers of funds their customers knowingly commit to foreign markets or refusing to accept those trades[,]'' and stated that the revised interpretation ''is a more logical approach to balancing the desire of U.S. customers to trade on foreign exchanges with the increased insolvency risks involved in trading in some of those jurisdictions.''

Administrative Procedures Act

The Administrative Procedures Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The Interpretative Statement to Rule 30.7 set forth in revised Appendix B will relieve the obligation of FCMs and certain foreign firms exempt from registration as an FCM under Rule 30.10 to set aside their own funds to satisfy the secured amount requirement set forth in Rule 30.7. Accordingly, the Commission has determined to make Appendix B effective immediately.

List of Subjects in 17 CFR Part 30

Consumer protection, Definitions, Foreign futures, Foreign options, Treatment of foreign futures or foreign options secured amount.

Accordingly, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Appendix B is revised to read as follows:

Appendix B to Part 30—Interpretative Statement With Respect to the Secured Amount Requirement Set Forth in § 30.7

1. Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts such money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers.[1] This amount is denominated as the ''foreign futures or foreign options secured amount'' and that term is defined in Rule 1.3(rr). The separate accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c). Further, each FCM must obtain and retain in its files for the period provided in Rule 1.31 an acknowledgment from the depository that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

2. In a series of orders issued pursuant to Rule 30.10, the Commission required that certain foreign firms exempt from registration as FCMs essentially comply with the standards of Rule 30.7.[2] Specifically, the

[1] Commission rules referred to herein are found at 17 CFR Chapter I.

[2] 61 FR 10891 (March 18, 1996).

[3] 65 FR 53946 (September 6, 2000). Persons concerned with what options on foreign stock index or government debt futures can be lawfully offered or sold to customers located in the U.S. may consult the foreign instruments approval backgrounder on the Commission's website at http://www.cftc.gov/opa/backgrounder/part30.htm.

[1] ''Foreign futures or foreign options customer'' means ''any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.3] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7].'' Rule 30.1(c). ''Foreign futures'' means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Rule 30.1(a). ''Foreign option'' means ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'put,' 'call,' 'advance guaranty,' or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade.'' Rule 30.1(b).

[2] Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Commodity Exchange Act (''Act'') and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization (''SRO''). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief (referred to herein as ''Rule 30.10 firms'') must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. For a list of those foreign regulators and SROs that have been issued a Rule 30.10 order, see Appendix C to Part 30. In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction be granted broader relief to engage in

Commission stated that ''[the secured amount] requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at *all* intermediaries and exchange clearing organizations.'' [3] The Commission further interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to take appropriate action (i.e., set aside funds in a ''mirror'' account) in the event that it becomes aware of facts leading it to conclude that foreign futures and foreign options customer funds are not being handled consistent with the requirements of Commission rules or relevant order for relief by any subsequent intermediary or exchange clearing organization.

3. Upon further analysis and reconsideration of this matter, the Commission has determined to revise its prior interpretation of the Rule 30.7 secured amount requirement. The Commission notes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating FMC or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whetehr the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.[4]

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) (''Rule 1.55(f) customers'').[5] While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transactions.[6]

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7),[7] or (2) Paragraphs 6 and 8 of Appendix A to Rule 1.55(c).[8] Rule 30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulatory) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. If an FCM receives from the initial depository the acknowledgment described in Rule 30,7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A of Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by is home regulator.

7. IF an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers and acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

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transactions on exchanges other than in its home jurisdiction (referred to herein as ''expanded relief''), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions. Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7. For the most recent order granting expanded relief, see 64 FR 50248 (September 16, 1999) (Singapore Exchange Derivatives Trading Limited).

[3] 64 FR 50248, 50251, n.19 (emphasis added).

[4] Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Appendix A to Part 30.

[5] 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of ''eligible swap participants'' in Rule 35.1.

[6] *Id.* at 8569.

[7] Rule 1.55(b)(7) reads as follows: Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

[8] Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of Appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of October 11, 2000. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of Part 30.

Dated: Issued in Washington, D.C. on October 5, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–26068 Filed 10–10–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending the orders issued pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited. The amendment reflects the Commission's revised interpretation of the Rule 30.7 foreign futures or foreign options secured amount requirement (''secured amount requirement'') as it applies to both futures commission merchants (''FCMs'') and certain foreign firms exempt from such registration. Specifically, the Commission has determined to revise its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation of the secured amount requirement is set out in a revised appendix issued concurrently with this release and published elsewhere in today's **Federal Register**.

EFFECTIVE DATE: October 11, 2000.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commisison, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Amending Prior Orders Issued Pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited

I. Background

Part 30 of the Commission's rules sets forth rules governing foreign futures [1] and foreign option [2] transactions. Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of a futures commission merchant (''FCM'') from registration under the Commodity Exchange Act (''Act'') and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization (''SRO'').[3] Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions.[4] Firms seeking confirmation of relief (referred to herein as ''Rule 30.10 firms'') must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.[5]

In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction to be granted broader relief to engage in transaction on exchanges other than in its home jurisdiction (referred to herein as ''expanded relief''), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions.[6] Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7.

The orders granting expanded relief require Rule 30.10 firms to either set aside funds constituting the secured amount requirement in a separate account: (1) As set forth in the relevant order for expanded relief (see below), (2) as set forth in Rule 30.7 (treating those funds in the manner prescribed by that rule), or (3) in compliance with either of the above procedures, with the amount required to be segregated under local law to be substituted for the secured amount. The alternative secured amount requirement described within each order for expanded relief states, in relevant part:

The separate account or accounts referred to [herein] may be deemed a good secured amount depository only if the [firm] obtains and retains in its files for the period required by applicable law and [exchange or SRO] rules, a written acknowledgment from such separate account depository that:

[1] ''Foreign futures'' as defined in Part 30 means ''any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade.'' Rule 30.1(a). Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] ''Foreign option'' as defined in Part 30 means ''any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege', 'indemnity,' 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade.'' Rule 30.1(b).

[3] The specific elements examined by the Commission in evaluating whether the particular foreign regulatory program provides a basis for issuing an order pursuant to Rule 30.10 are set forth in Appendix A to Part 30. *See* 52 FR 28990, 29001 (August 5, 1987).

[4] These conditions require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. Customers, and the exchange of information with the Commission. *See* 62 FR 47792, 47793, n.7 (September 11, 1997).

[5] For a list of representations typically required of each Rule 30.10 firm, see 62 FR 47792, 47793, n.8.

[6] The Commission has issued orders granting expanded relief to the U.K. Investment Management Regulatory Organisation (''IMRO'') 62 FR 10449 (March 7, 1997), the U.K. Securities and Futures Association (''SFA'') 62 FR 10447 (March 7, 1997, New Zealand Futures and Options Exchange (''NZFOE''), 61 FR 64985 (December 10, 1996), the Montreal Exchange, 62 FR 8875 (February 27, 1997) and the Sydney Futures Exchange (''SFE''), 62 FR 10445 (March 7, 1997). In addition, the Commission has authorized members of the Singapore International Monetary Exchange, now known as the Singapore Exchange Derivatives Trading Limited (''SGX–DT''), to solicit and accept orders from U.S. customers for otherwise permitted transactions on Eurex Deutschland, 64 FR 50248 (September 16, 1999). Although applicants for Rule 30.10 orders generally have obtained relief from transactions entered into from within their home country before seeking expanded relief applicable to transactions entered into on an exchange located outside their borders, *e.g.,* IMRO, the Commission has combined the two forms of relief into one single order, *e.g.,* NZFOE.

• It was informed that such money, securities or property are held for or on behalf of customers of the [firm]; and

• It will ensure that such money, securities or property will be held and treated in accordance with the provisions of this paragraph; and, *provided further, that the [firm] assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the [firm] has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described [herein].* (emphasis added)

In other words, the Commission required each Rule 30.10 firm with expanded relief to perform an inquiry before customer funds were sent to another intermediary, and to take appropriate action (*i.e.,* set aside funds in a ''mirror'' account) in the event that it became aware of facts leading it to conclude that U.S. customer funds were not being handled consistent with this requirement by any intermediary or exchange clearing organization beyond the initial depository. The Commission further stated that ''[the secured amount] requirement [set forth herein] is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations.'' [7]

II. Amendment

Upon further analysis and reconsideration of this matter, the Commission has determined to revise its interpretation of the secured amount requirement set forth in Rule 30.7 and the orders for expanded relief. As set forth in Appendix B to Part issued concurrently with this order, the Commission believes that existing written risk disclosures provide foreign futures and foreign options customers with notice that the treatment of customer funds outside the U.S. may differ from the treatment of customer funds inside the U.S. The Commission also believes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating firm becomes insolvent. Accordingly, the Commission believes that the Rule 30.7 acknowledgment required of certain Rule 30.10 firms should apply only to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository.

Appendix B provides that FCMs and certain Rule 30.10 firms need not maintain mirror accounts, provided that they obtain from the initial depository the acknowledgment described in Rule 30.7 and that they furnish a written disclosure statement to customers concerning treatment of customer funds by other jurisdictions set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or in a comparable disclosure statement prescribed by the firm's home country regulator. The Commission believes that Rule 30.10 firms transacting business for foreign futures and foreign option customers outside of the firms' jurisdictions should be able to operate in a similar fashion. Accordingly, if a Rule 30.10 firm operating pursuant to an order for expanded relief receives from the initial depository the acknowledgment described in Rule 30.7 and furnishes to foreign futures and foreign option customers the written disclosure statement set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by its home country regulator, then it may include all funds maintained in the account or accounts in calculating its secured amount requirement. Should a Rule 30.10 firm fail to receive from the initial depository the required acknowledgment or to furnish the required risk disclosure, then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

III. Conclusion and Order

The Commission has determined to revise its interpretation of the secured amount requirement. For drafting purposes, the Commission has determined to amend the alternative secured amount requirement set forth in prior Rule 30.10 orders for expanded relief to track as closely as possible the language of Rule 30.7. In addition, the Commission is adding to each order the requirement that each Rule 30.10 firm furnish to each foreign futures and foreign option customer a risk disclosure statement containing the language set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. For the sake of clarity, the Commission also is deleting from each order granting expanded relief the footnote describing the obligation to perform an inquiry with respect to depositories beyond the initial depository and, if necessary, to set aside funds. These amendments are made to the following orders:

NZFOE (61 FR 64988–89)

The text of paragraphs describing the secured amount requirement is amended to read:

II. Each Dealer seeking rule 30.10 relief hereunder must apply in writing whereby it:

* * * * *

K. With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE and the SFE [20] [footnote unchanged], whether by the Dealer directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, complies with paragraphs 1 or 2 below:

1.a. Must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

[7] For the most recent order, see 64 FR 50248, 50251, n.19 (SGX–DT).

(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. You local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade

OR

(3) A comparable disclosure statement prescribed by the NZFOE; or

2. Must comply with the terms and procedures of paragraph 1, with the amount required to be segregated under NZFOE rules and New Zealand laws to be substituted for the secured amount requirement as set forth in paragraph 1.[21] [formerly footnote 22]

* * * * *

For the sake of clarity, the Commission notes that language similar to the following HAS BEEN STRICKEN from each order, using the NZFOE order as an example:

1. * * *

e. The separate account or accounts referred to in paragraph 1.a. may be deemed to be a good secured amount depository only if the Dealer obtains and retains in its files for the period required by Exchange rules, a written acknowledgment from such separate account depository that:

(1) It was informed that such money, securities or property are held for or on behalf of customers of the Dealer; and

(2) It will ensure that such money, securities or property will be held and treated at all times effectively in accordance with the provisions of this paragraph; and, provided further, that the Dealer assures itself that such separate account depository will not pass on such money, securities, or property to any other depository unless the Dealer has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in this paragraph 1 herein;[21] [footnote 21 deleted]

2. Must set aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 CFR 30.7 (2000), and treat those funds in the manner described by that rule.

* * * * *

The Montreal Exchange (62 FR 8875, 8876)

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the expanded relief permitted Montreal Exchange Member firms to engage in foreign futures and [foreign] options transactions for U.S. customers other than on the Montreal Exchange under this Supplemental Order will be contingent upon compliance by the Exchange Member firm with the following additional conditions:

* * * * *

(6) With respect to transactions effected on any non-U.S. futures and options exchange on behalf of U.S. customers, whether by the Montreal Exchange Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, complies with paragraph 1 below:

1.a. Must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgement from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customers with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign, exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, refunds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(3) A comparable disclosure statement prescribed by the Exchange; or

* * * * *

SFE (62 FR 10445, 1044)

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief set forth in the expanded relief authorized pursuant to the 1993 Order is applicable only if the Exchange Member firm complies with the following procedures, which are consistent with the requirements applicable to commission registered FCMs concerning the protection of customer funds under the provisions of [Rule 30.7]: [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE[7] [footnote 7 unchanged] and the SFE, whether by the SFE member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFE member complies with paragraphs a or b below:

a.(1) Must maintain in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and

are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by SFE; or

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under SFE rules and Australian laws may be substituted for the secured amount requirement as set forth in such paragraphs.[8] [formerly footnote 9]

* * * * *

SFA (62 FR 10448, 10449)

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief authorized in its Original Order with respect to transactions on [an exchange other than a U.K. Recognized Investment Exchange] is applicable only if an SFA member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered futures commission merchants (''FCMs'') concerning the protection of customer funds under the provisions of [Rule 30.7]:[6] [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the SFA Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFA member complies with paragraphs a or b below:

a.(1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by SFA; or

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under SFA rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in paragraph a.[8] [formerly footnote 9]

* * * * *

IMRO (62 FR 10449, 10450)

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief authorized in its Original Order with respect to transactions on [an exchange other than a U.K. Recognized Investment Exchange] is applicable only if an IMRO member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered futures commission merchants (''FCMs'') concerning the protection of customer funds under the provisions of [Rule 30.7]: [6] [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the IMRO Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the IMRO member complies with paragraphs a or b below:

a.(1) Maintains in a separate account or accounts money, securities and property in

an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and IMRO rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by IMRO.

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under IMRO rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in paragraph a.[7] [formerly footnote 8]

* * * * *

SGX–DT (64 FR 50248, 50250–51)

The text of paragraphs describing the secured amount requirement is amended to read:

The expanded Rule 30.10 relief provided under this Supplemental Order, however, is contingent upon SGX–DT's and SGX–DT Member's compliance with certain conditions below.

* * * * *

(5) With respect to transactions effected on Eurex on behalf of U.S. customers, whether by the SGX–DT Member directly as a clearing member of Eurex or through the intermediation of one or more intermediaries, the SGX–DT Member complies with paragraphs 1 or 2 below:

1.a. Must remain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. You local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(3) A comparable disclosure statement prescribed by SGX–DT.

2. Complies with the terms and procedures of paragraph 1, except that the amount required to be segregated under SGX–DT rules and Singapore law may be substituted for the secured amount requirement as set forth in paragraph 1.

* * * * *

Issued in Washington, DC on October 5, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–26069 Filed 10–10–00; 8:45 am]

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Federal Register

Wednesday,
October 11, 2000

Part VI

The President

Proclamation 7352—German-American Day, 2000

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Wednesday, October 11, 2000

Presidential Documents

Title 3—

The President

Proclamation 7352 of October 5, 2000

German-American Day, 2000

By the President of the United States of America

A Proclamation

As we celebrate German-American Day and the many contributions that German Americans have made to our national community, we also mark the 10th anniversary of German unification. The historic achievements of the last 10 years are all the more remarkable when we remember the dark days of the Cold War, a time when many citizens in Eastern Europe and around the globe lived under governments of oppression and tyranny. Nowhere was the threat more real than in West Berlin, where Americans and Germans stood together in defense of democracy and commitment to freedom. Ultimately, after almost three decades of division, the Berlin Wall came down and the people of Germany were reunited. Today, Americans and Germans are working together to ensure that democracy will be an abiding legacy for future generations throughout Europe.

Our present efforts are only the latest chapter of our shared history. In 1683, German Mennonites seeking religious tolerance landed near Philadelphia. Their arrival marked the beginning of waves of German immigration that would ebb and flow with the tides of history, ultimately bringing more than 7 million people to our shores. Today, nearly a quarter of all Americans can trace their ancestry back to their Germanic roots, and they continue to enrich our Nation with a proud heritage marked by a strong commitment to family, work, duty, and country.

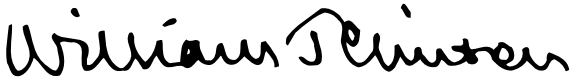
Many prominent German Americans have strengthened our society through the years. Publisher Johann Peter Zenger championed freedom of the press in the early 18th century, and Thomas Nast's powerful cartoons increased public awareness of corruption within Tammany Hall in 19th-century New York. During the American Revolution, Baron de Kalb and Friedrich von Steuben fought valiantly for our freedom, just as Dwight Eisenhower and Chester Nimitz did in World War II. German Americans who have enriched America's cultural, scientific, and economic life include writers John Steinbeck and Erich Maria Remarque; physicists Albert Einstein and Maria Goeppert-Mayer; philosophers Hannah Arendt and Paul Tillich; and industrialists and business leaders John D. Rockefeller and John Wanamaker.

Behind the many well-known individuals who have played a prominent part in our history are millions of German immigrants whose names are not widely recognized, yet who profoundly shaped the America we know today. Industrious German Americans helped settle our cities and frontiers; defend democracy during times of conflict; promote our prosperity in times of peace; and preserve the bonds of family and heritage that our Nation shares with the people of Germany. As we celebrate German-American Day and the 10th anniversary of German unification and look ahead to the promise of a new century, America recognizes with pride and gratitude the important role that German Americans continue to play in the life of our Nation and celebrates the strength of our friendship with Germany.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, October 6, 2000, as German-American Day. I encourage all Americans to remember

and celebrate the important contributions made to our country by our millions of citizens of German descent and to celebrate our close ties to the people of Germany.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.



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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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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.

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Security Assistance Act of 2000 (Oct. 6, 2000; 114 Stat. 845)

H.R. 5193/P.L. 106–281
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H.J. Res. 110/P.L. 106–282
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