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Thursday
August 1, 1996

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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NEW YORK, NY

WHEN: September 17, 1996 at 9:00 am.
WHERE: National Archives—Northwest Region
201 Varick Street, 12th Floor
New York, NY
RESERVATIONS: 800–688–9889

WASHINGTON, DC

WHEN: September 24, 1996 at 9:00 am.
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA06

Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials; Correction

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in the text of one of the amended regulatory provisions of the final rule on executive branch certificates of divestiture, which was published by OGE in the Federal Register on Tuesday, June 25, 1996 (61 FR 32633–32636).

EFFECTIVE DATE: July 25, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics; telephone: 202–208–8000, extension 1110; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In the above-noted final rule document published by OGE, the regulatory text at newly added paragraph (e)(1) of § 2634.1002 of 5 CFR contained a reference to paragraphs (e)(2) through ''(g)(6)'' of that section, whereas in fact it was intended to refer to paragraphs (e)(2) through ''(e)(6)'' thereof. This correction document corrects that error.

Approved: July 29th, 1996.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is correcting the June 25, 1996 publication of the final rule amendments on Public Financial Disclosure, Conflicts of Interest, and Certificates of Divestiture for Executive Branch Officials, which was the subject of FR Doc. 96–15970, as follows:

On page 32636, in the second column, in the ninth line of the regulatory text of paragraph (e)(1) of § 2634.1002, the reference to ''(g)(6)'' is corrected to read ''(e)(6)''.

[FR Doc. 96–19605 Filed 7–31–96; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

RIN 0560–AE63

Removal of Duplicate Cotton and Rice Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This rule removes unnecessary, duplicative regulations concerning the formulas by which the world prices of cotton and rice are calculated. This action is being taken as part of the National Performance Review.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, Food Grains Analysis Division, Farm Service Agency, U.S. Department of Agriculture, AG BOX 0518, P.O. Box 2415, Washington, DC 20013–2415 or telephone 202–720–3452.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

This action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are: Cotton Production Stabilization—10.052 and Rice Production Stabilization—10.065.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR part 26 set forth in this rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Background

This final rule removes duplicate regulations. The regulations at 7 CFR part 26, Subpart A, were originally issued to establish the formula for calculating the world price for upland cotton. These regulations were subsequently duplicated at 7 CFR part 1427.25 but were not removed from their original location. Similarly, the regulations at 7 CFR part 26, subpart B, were originally issued to establish the formula for calculating the world price for rice. These regulations were duplicated at 7 CFR part 1421.25 but also were not removed from their original location. There being no need for such duplication, this rule removes the needless regulations under 7 CFR part 26.

List of Subjects in 7 CFR Part 26

Rice, Upland cotton, World market price.

Accordingly, under the authority at 7 U.S.C. 1441–2, 7 CFR part 26 is removed and reserved.

Signed at Washington, DC, on July 24, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–19545 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV96–928–1 FIR]

Papayas Grown in Hawaii; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule establishing an assessment rate for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, FAX (209) 487–5906, or Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–5127, FAX (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2491, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 928 and Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, handlers of papayas grown in Hawaii are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of papaya producers and handlers may be classified as small entities.

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

The Committee met on April 26, 1996, and unanimously recommended 1996–97 expenditures of $485,300 and an assessment rate of $0.0059 per pound of papayas. In comparison, last year's budgeted expenditures were $435,800. The assessment rate of $0.0059 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $160,000 for marketing and promotion activities, $130,000 for research and development, and $67,000 for salaries. Budgeted expenses for these items in 1995–96 were $165,500, $115,000, and $67,000 respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of papayas grown in Hawaii. Papaya shipments for the year are estimated at 30 million pounds which should provide $177,000 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, the USDA's Foreign Agricultural Service, the County of Hawaii, and the Japanese Inspection program, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the June 4, 1996, issue of the Federal Register (61 FR 28000). That rule provided for a 30-day comment period. No comments were received.

While this rule will impose some costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the costs may be

passed on to producers. However, these costs should be offset by the benefits derived by the operation of the marketing order. Therefore, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable papayas handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, no comments were received.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim rule amending 7 CFR part 928 which was published at 61 FR 28000 on June 4, 1996, is adopted as a final rule without change.

Dated: July 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–19520 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ANE–11]

RIN 2110–AA66

Alteration of V–2 and V–14; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters Federal Airways V–2 and V–14 between the Albany, NY, Very High Frequency Omnidirectional Range (VOR) and the Gardner, MA, VOR. This action allows more flexibility for air traffic operations and enhances utilization of that airspace. In addition, the airspace description for V–14 in the notice of proposed rulemaking (NPRM) errorneously included Canadian airspace. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, 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:

History

On September 21, 1995, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 71 (14 CFR part 71) to alter V–2 and V–14 from the Albany, NY, VOR to the Gardner, MA, VOR (60 FR 48937). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the removal of the language to exclude Canadian airspace from V–14, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 alters V–2 and V–14 from the Albany, NY, VOR to the Gardner, MA, VOR. These airways are the primary arrival routes to Boston, MA, from the west. At the present time, the segment of the airways between the Albany VOR and the Gardner VOR is limited to a 10,000-foot minimum en route altitude (MEA). Realigning these airways will allow for a lower MEA to be assigned along these routes and will provide more flexibility for air traffic operations in that area. This alteration will enhance utilization of that airspace. In addition, the airspace description for V–14 in the NPRM errorneously included Canadian airspace. This action corrects that error because V–14 does not penetrate the Canadian airspace.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Drummond, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 093° and Aylmer, ON, Canada, 254° radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

* * * * *

V–14 [Revised]

From Chisum, NM, via Lubbock, TX; Childress, TX; Hobart, OK; Will Rogers, OK; INT Will Rogers 052° and Tulsa, OK, 246° radials; Tulsa; Neosho, MO; Springfield, MO; Vichy, MO; INT Vichy 067° and St. Louis, MO, 225° radials; Vandalia, IL; Terre Haute, IN; Indianapolis, IN; Muncie, IN; Findlay, OH; DRYER, OH; Jefferson, OH; Erie, PA; Dunkirk, NY; Buffalo, NY; Geneseo, NY; Georgetown, NY; INT Georgetown 093° and Albany, NY, 270° radials; Albany; INT Albany 084° and Gardner, MA, 284° radials; Gardner; to Norwich, CT. The airspace within R–5207 is excluded.

* * * * *

Issued in Washington, DC, on July 25, 1996.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 96–19606 Filed 7–31–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 95

[Docket No. 28621; Amdt. No. 397]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the national Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Administration (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace.

In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on July 5, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 15, 1996:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 397 Effective Date, August 15, 1996]

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
Atlantic Routes—B9 is Added to Read		
Marathon, FL NDB	*Deeds, FL Fix	**2000
*4000–MRA		
**1500–MOCA		
§ 95.6099 VOR Federal Airway 99 is Amended to Delete		
Hartford, CT Vortac	*Graym, MA Fix	**3000
*4000–MRA		
**2500–MOCA		
§ 95.6151 VOR Federal Airway 151 is Amended to Read in Part		
Gails, MA Fix	Inndy, RI Fix	2000
Inndy, RI Fix	Providence, RI Vortac	*2000
*1500–MOCA		
§ 956175 VOR Federal Airway 175 is Amended to Read in Part		
Madup, IA Fix	*Welte, IA Fix	5500
*3900–MRA		
Welte, IA Fix	Sioux City, IA Vortac	3000
§ 95.6189 VOR Federal Airway 189 is Amended to Read in Part		
Wright Brothers, NC VOR/DME	Tar River, NC Vortac	*4000
*2000–MOCA		
§ 95.6233 VOR Federal Airway 233 is Amended to Read in Part		
Gaylord, MI VOR/DME	*Dripe, MI Fix	3100
*5000–MRA		
95.6268 VOR Federal Airway 268 is Amended by Adding		
Tonni, MA Fix	*Meshl, ME Fix	5000
*5000–MRA		
Meshl, ME Fix	Sappe, ME Fix	3000
Sappe, ME Fix	Augusta, ME VOR/DME	*3000
*1800–MOCA		
Is Amended to Read in Part		
Inndy, RI Fix	*Tonni, MA Fix	6000
*6000–MRA		
§ 95.6451 VOR Federal Airway 451 is Amended to Delete		
Groton, CT VOR	Avonn, RI Fix	6000
Avonn, RI Fix	Inndy, RI Fix	2000
Inndy, RI Fix	*Tonni, MA Fix	6000
*6000–MRA		
Tonni, MA Fix	Seedy, NH Fix	5000

From	To	MEA	MAA
§ 95.7062 Jet Route No. 62 is Amended to Delete			
Nantucket, MA Vortac	Saile, MA W/P	18000	45000
§ 95.7086 Jet Route No. 86 is Amended by Adding			
Beatty, NV Vortac	Fuzzy, NV Fx	18000	45000
Fuzzy, NV Fx	Boulder City, NV Vortac	29000	45000
§ 95.7092 Jet Route No. 92 is Amended to Read in Part			
Beatty, NV Vortac	Boulder City, NV Vortac	24000	45000

§ 95.7092 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway segment		Changeover Points	
From	To	Distance	From
J–92			
Beatty, NV Vortac	Boulder City, NV, Vortac	12	Boulder City.

[FR Doc. 96–19221 Filed 7–31–96; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28644; Amdt. No. 1743]

RIN 2120–AA65]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

The Rule

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

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

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 26, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME,

LDA, LDA/DME, DSF, SDF/DME; § 97.27 NDB, NDB, DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER AIAPs, identified as follows:

. . . Effective August 15, 1996

Windsor Locks, CT, Bradley Intl, VOR OR TACAN RWY 6, Orig, CANCELLED
Windsor Locks, CT, Bradley Intl, VOR RWY 15, Orig
Windsor Locks, CT, Bradley Intl, VOR OR TACAN RWY 15, Amdt 2A CANCELLED
Windsor Locks, CT, Bradley Intl, VOR OR TACAN OR GPS RWY 24, Amdt 1, CANCELLED
Windsor Locks, CT, Bradley Intl, VOR OR TACAN OR GPS RWY 33, Orig, CANCELLED
Windsor Locks, CT, Bradley Intl, NDB OR GPS RWY 6, Amdt 27
Windsor Locks, CT, Bradley Intl, COPTER ILS 058, Amdt 1
Windsor Locks, CT, Bradley Intl, ILS RWY 6, Amdt 33
Windsor Locks, CT, Bradley Intl, ILS RWY 24, Amdt 7
Windsor Locks, CT, Bradley Intl, ILS RWY 33, Amdt 6
Belle Plaine, IA, Belle Plaine Muni, NDB RWY 35, Orig
Sioux City, IA, Sioux Gateway, GPS RWY 17, Orig
Sioux City, IA, Sioux Gateway, VOR/DME RNAV RWY 17, Orig-A CANCELLED
Isoco County, MI, East Tawas, VOR OR GPS–A, Amdt 7
Oscoda, MI, Oscode-Wurtsmith, VOR OR GPS RWY 6, Orig
Oscoda, MI, Oscoda-Wurtsmith, VOR OR GPS RWY 6, Orig-B, CANCELLED
Oscoda, MI, Oscoda-Wurtsmith, ILS/DME RWY 24, Amdt 1
Lincolnton, NC, Lincoln County, LOC RWY 23, Orig
Columbus, OH, Port Columbus Intl, NDB RWY 28R, Orig
Scappoose, OR, Scappoose Industrial Airpark, LOC/DME RWY 15, Orig
Devils Lake, ND, Devils Lake Muni, NDB RWY 31, Orig
Devils Lake, ND, Devils Lake Muni, ILS RWY 31, Orig
Devils Lake, ND, Devils Lake Muni, ILS/DME RWY 31, Amdt 1 CANCELLED
Pittsburgh, PA, Pittsburgh International, ILS RWY 10R, Amdt 7
Dallas-Fort Worth, TX, Dallas-Ft Worth International, ILS RWY 17L, Orig
Dallas-Fort Worth, TX, Dallas-Ft Worth International, ILS RWY 35R, Orig
Fort Worth, TX, Fort Worth Meacham Intl, NDB OR GPS RWY 34R, Amdt 6
Fort Worth, TX, Fort Worth Meacham Intl, LOC BC RWY 34R, Amdt 7 CANCELLED
Fort Worth, TX, Fort Worth Meacham Intl, ILS RWY 34R, Orig
Chetek, WI, Chetek Muni-Southworth, VOR/DME–A, Orig

. . . Effective September 12, 1996

Eliot, ME, Littlebrook Air park, NDB OR GPS–A, Amdt 1, CANCELLED
Eliot, ME, Littlebrook Air park, NDB–B, Orig
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 22, Amdt 9
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 33L, Amdt 1
Frederick, MD, Frederick Muni, ILS RWY 23, Amdt 3
Sussex, NJ, Sussex, GPS RWY 3, Orig
Aurora, OR, Aurora State, LOC/DME RWY 17, Orig
Portland, OR, Portland Intl, MLS RWY 28L, Orig
Moses Lake, WA, Grant County, MLS RWY 32R, Orig

. . . Effective October 10, 1996

Kodiak, AK, Kodiak, GPS RWY 25, Orig
Lincoln, CA, Lincoln Regional/Karl Harder Field, ILS RWY 15, Orig
Holyoke, CO, Holyoke, GPS RWY 17, Orig
Holyoke, CO, Holyoke, GPS RWY 35, Orig
Windsor Locks, CT, Bradley Intl, GPS RWY 15, Amdt 1
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 9, Orig
Dover/Cheswold, DE, Delaware Airpark, GPS RWY 27, Orig
Bowling Green, KY, Bowling Green-Warren County Regional, GPS RWY 21, Orig
Hammond, LA, Hammond Muni, GPS RWY 31, Orig
Norfolk, NE, Karl Stefan Memorial, VOR OR GPS RWY 19, Amdt 7
Norfolk, NE, Karl Stefan Memorial, ILS RWY 1, Amdt 4
Manchester, NH, Manchester, VOR/DME RNAV RWY 6, Amdt 4
Erwin, NC, Harnett County, GPS RWY 04, Orig
Southport, NC, Brunswick County, GPS RWY 23, Orig
Altoona, PA, Altoona-Blair County, VOR OR GPS–A, Amdt 4
Athens, TX, Athens Muni, NDB RWY 35, Amdt 4
Bonham, TX, Jones Field, VOR/DME RWY 17, Orig
Bonham, TX, Jones Field, VOR/DME OR GPS RWY 17, Amdt 2 CANCELLED
Bonham, TX, Jones Field, NDB RWY 17, Amdt 3
Bowie, TX, Bowie Muni, NDB OR GPS RWY 17, Amdt 3
Bowie, TX, Bowie Muni, NDB OR GPS RWY 35, Amdt 3
Caddo Mills, TX, Caddo Mills Muni, NDB RWY 35L, Amdt 2
Caddo Mills, TX, Caddo Mills Muni, GPS RWY 35L, Orig
Dallas, TX, Dallas Love Field, ILS RWY 13L, Amdt 29
Dallas, TX, Dallas Love Field, ILS RWY 13R, Amdt 3
Dallas, TX, Dallas Love Field, ILS RWY 31L, Amdt 19
Dallas, TX, Dallas Love Field, ILS RWY 31R, Amdt 3
Denton, TX, Denton Muni, NDB OR GPS RWY 17, Amdt 6
Denton, TX, Denton Muni, ILS RWY 17, Amdt 6
Granbury, TX, Granbury Muni, VOR/DME–A, Orig
Granbury, TX, Granbury Muni, VOR OR GPS–B, Amdt 3 CANCELLED
Greenville, TX, Majors, VOR/DME, RWY 17 Orig
Greenville, TX, Majors, VOR/DME–A, Amdt 2 CANCELLED
Greenville, TX, Majors, NDB RWY 17, Amdt 5
Greenville, TX, Majors, NDB RWY 35, Amdt 1
Greenville, TX, Majors, ILS RWY 17, Amdt 5
Henderson, TX, Rusk County, VOR/DME OR GPS–A, Amdt 3
Lancaster, TX, Lancaster, NDB OR GPS RWY 31, Amdt 1
Longview, TX, Gregg County, VOR OR TACAN, RWY 13, Amdt 20
Longview, TX, Gregg County, ILS RWY 13, Amdt 11
Mesquite, TX, Mesquite Metro, NDB OR GPS RWY 17, Amdt 5
Mesquite, TX, Mesquite Metro, LOC BC RWY 35, Amdt 2
Mesquite, TX, Mesquite Metro, ILS RWY 17, Amdt 1
Palestine, TX, Palestine Muni, VOR/DME OR GPS RWY 17, Amdt 4
Paris, TX, Cox Field, VOR OR GPS RWY 35, Amdt 1
Rockwall, TX, Rockwall Muni, VOR/DME OR GPS RWY 16, Amdt 4 CANCELLED
Rockwall, TX, Rockwall Muni, NDB–A, Orig
Rockwall, TX, Rockwall Muni, GPS RWY 16, Orig
Rockwall, TX, Rockwall Muni, GPS RWY 34, Orig
Sherman, TX, Sherman Muni, VOR/DME–A, Orig
Sherman, TX, Sherman Muni, VOR/DME OR GPS RWY 34, Amdt 4 CANCELLED
Terrell, TX, Terrell Muni, VOR/DME OR GPS RWY 35, Amdt 3 CANCELLED
Terrell, TX, Terrell Muni, NDB OR GPS RWY 17, Amdt 3
Chesapeake, VA, Chesapeake Muni, GPS RWY 5, Orig

Note: The FAA published Procedures in Docket No. 28625, Amdt No. 1740 to Part 97 of the Federal Aviation Regulations (VOL 61, FR No. 139, Page 37353, dated July 18, 1996 under Section 97.23 effective 12 Sep 96 which is hereby amended:

CHANGE EFFECTIVE DATE TO 10 OCT 1996, FOR THE FOLLOWING PROCEDURES;

St. Mary's, AK, St Mary's, GPS RWY 16, Orig
St. Mary's, AK, St Mary's, GPS RWY 34, Orig

[FR Doc. 96–19607 Filed 7–31–96; 8:45 am]
BILLING CODE 4710–13–M

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14 CFR Part 97

[Docket No. 28645; Amdt. No. 1744]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 26, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

. . . *effective upon publication*

FDC date	State	City	Airport	FDC No.	SIAP
06/27/96	ID	McCall	McCall	FDC 6/4222	NDB or GPS–A, ORIG...
07/02/96	UT	Logan	Logan-Cache	FDC 6/4430	VOR or GPS-A AMDT 6... THIS CORRECTS NOTAM IN 96–16
07/11/96	MN	Brainerd	Brainerd-Crow Wing County Regional.	FDC 6/4731	VOR or GPS RWY 30 AMDT 13...
07/12/96	NE	Lincoln	Lincoln Muni	FDC 6/4755	ILS RWY 35L, AMDT 11A...
07/12/96	NE	.....do	.....do	FDC 6/4756	ILS RWY 17R, AMDT 6A...
07/16/96	IA	Dubuque	Dubuque Regional	FDC 6/4890	VOR RWY 31, AMDT 11...
07/16/96	IA	.....do	.....do	FDC 6/4894	NDB or GPS RWY 31, AMDT 8...
07/16/96	IA	.....do	.....do	FDC 6/4895	VOR OR GPS RWY 13, AMDT 8A...
07/16/96	IA	.....do	.....do	FDC 6/4896	VOR or GPS RWY 36, AMDT 5A...
07/16/96	IA	.....do	.....do	FDC 6/4897	ILS RWY 31, AMDT 10A...
07/16/96	IA	.....do	.....do	FDC 6/4898	LOC/DME BC RWY 13, AMDT 4...
07/17/96	NY	New York	John F. Kennedy Intl	FDC 6/4930	ILS RWY 4R AMDT 28B...
07/17/96	NY	.....do	.....do	FDC 6/4931	ILS RWY 13L AMDT 14A...
07/18/96	MS	Pascagoula	Trent Lott Intl	FDC 6/4967	ILS RWY 17, ORIG...
07/18/96	NY	New York	John F. Kennedy Intl	FDC 6/4979	VOR/DME or TACAN or GPS RWY 22L AMDT 4...
07/18/96	NY	.....do	.....do	FDC 6/4980	VOR or GPS RWY 4L/R AMDT 15...
07/18/96	NY	.....do	.....do	FDC 6/4983	ILS RWY 22L AMDT 22...
07/18/96	NY	.....do	.....do	FDC 6/4984	ILS RWY 31L AMDT 9...
07/18/96	NY	.....do	.....do	FDC 6/4985	ILS RWY 3IR AMDT 13...
07/19/96	GA	Columbus	Columbus Metropolitan	FDC 6/5010	ILS RWY 5, AMDT 24...
07/22/96	IL	Salem	Salem-Leckrone	FDC 6/5089	NDB or GPS RWY 18, AMDT 8...
07/22/96	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 6/5092	RADAR–1, AMDT 7...
07/23/96	IA	Charles City	Charles City Muni	FDC 6/5142	NDB–A, ORIG...
07/23/96	IA	.....do	.....do	FDC 6/5143	LOC RWY 12, ORIG– C...
07/23/96	IA	.....do	.....do	FDC 6/5144	NDB or GPS RWY 12, ORIG–C...
07/23/96	IA	Fort Madison	Fort Madison Muni	FDC 6/5139	VOR/DME RNAV or GPS RWY 34, AMDT 4...
07/23/96	IA	.....do	.....do	FDC 6/5140	VOR/DME RNAV or GPS RWY 16, AMDT 4...
07/23/96	IA	.....do	.....do	FDC 6/5141	VOR/DME or GPS–A, AMDT 6...

[FR Doc. 96–19608 Filed 7–31–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 601, 620, 630, 640, 650, 660, and 680

[Docket No. 95N–310B]

Revocation of Certain Regulations; Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to remove certain biologics regulations that are obsolete or no longer necessary to achieve public health goals. These regulations were identified for removal as the result of a page-by-page review of the agency's regulations. This regulatory review is in response to the Administration's ''Reinventing Government'' initiative which seeks to streamline government to ease the burden on regulated industry and consumers.

EFFECTIVE DATE: August 12, 1996.

FOR FURTHER INFORMATION CONTACT:

Regarding general information on FDA's ''reinventing initiative'': Lisa M. Helmanis, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

Regarding biologics regulations: Annette A. Ragosta, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton announced plans for the reform of the Federal regulatory system as part of the Administration's ''Reinventing Government'' initiative. In his March 4 directive, the President ordered all Federal agencies to conduct a page-by-page review of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In the Federal Register of October 13, 1995 (60 FR 53480), FDA issued a notice of proposed rulemaking in which FDA proposed to remove a number of outdated or unnecessary regulations in parts 100 through 801 (21 CFR parts 100 through 801). The regulations proposed for removal apply to a variety of products regulated by FDA, including foods, drugs, veterinary drugs, biological products, and devices. Interested persons were requested when submitting comments to identify the FDA Center responsible for the regulation of the product to which the comments applied. In order to expedite matters, the final rules resulting from the line-by-line review are being issued separately by FDA Centers. FDA is issuing this final rule, which eliminates

certain regulations affecting biological products in parts 600 through 680.

II. Comments

FDA received two comments on the proposed rule that related to the biologics regulations. One comment was general in nature and urged Congress to include FDA reform as a top priority in 1996.

Congress is currently considering legislation that would affect FDA programs and procedures. FDA has testified at congressional hearings on the pending bills. The agency does not believe it would be appropriate to comment on the ongoing legislative initiatives in this rulemaking.

The agency agrees with the comment that regulatory programs and the regulations that implement them should be reviewed and revised or reformed where appropriate. FDA is currently reviewing other biologics regulations, the potential removal or revision of which involves issues of greater regulatory complexity and, based on this review, will remove or significantly revise these regulations at a later date. In addition, a number of changes to the regulations and policies affecting biological products are already underway. (See for example, ''Interim Definition and Elimination of Lot-by-Lot Release for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products'' (60 FR 63048, December 8, 1995); ''Well-Characterized Biotechnology Products; Elimination of Establishment License Application'' (61 FR 2733, January 29, 1996); ''Changes to an Approved Application'' (61 FR 2739); ''Draft Guidance; Changes to an Approved Application for Well-Characterized Therapeutic Recombinant DNA-Derived and Monoclonal Antibody Biotechnology Products; Availability'' (61 FR 2748); ''Changes to an Approved Application; Draft Guidance; Availability'' (61 FR 2749).) This final rule, ''Revocation of Certain Regulations; Biological Products,'' is one part of the agency's efforts to create a more efficient and responsive regulatory system.

The other comment received was supportive of the proposed rule and stated that it was a good first step in reducing regulatory burden. The comment suggested the incorporation of the United States Pharmacopeia (USP) monograph system based on the Center for Drug Evaluation and Research model into the Center for Biologics Evaluation and Research's regulatory reform process.

The agency does not agree with this suggestion because biologics, for which FDA is removing additional standards from the regulations, are complex and diverse entities. Monographs for many types of biological products could become quickly outdated in the rapidly evolving field of biotechnology, as did the Additional Standards in parts 620, 630, 640, 650, 660, and 680, which this final rule is removing. Use of monographs would allow for less flexibility in the development of product specifications for complex biologicals.

III. Effective Date

As provided under 5 U.S.C. 553(d) and § 10.40(c) (21 CFR 10.40(c)), the effective date of a final rule may not be less than 30 days after the date of publication, except for, among other things, ''a regulation that grants an exemption or relieves a restriction'' (§ 10.40(c)(4)(i)). The final rule is effective August 12, 1996.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). 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 (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed removals have no compliance costs and do not result in any new requirements, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 620

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 630

Biologics, Labeling.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 650

Biologics.

21 CFR Part 660

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 680

Biologics, Blood, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 601, 620, 630, 640, 650, 660, and 680 are amended as follows:

PART 601—LICENSING

1. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

§ 601.30 [Removed]

2. Section 601.30 *Licenses required; products for controlled investigation only* is removed.

§ 601.31 [Removed]

3. Section 601.31 *Procedure* is removed.

§ 601.32 [Removed]

4. Section 601.32 *Form of license* is removed.

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

Part 620 [Removed]

5. Part 620 is removed.

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

Part 630 [Removed]

6. Part 630 is removed.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

7. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

Subpart K [Removed and Reserved]

8. Subpart K, consisting of §§ 640.110 through 640.114, is removed and reserved.

PART 650—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR DERMAL TESTS

Part 650 [Removed]

9. Part 650 is removed.

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

10. The authority citation for 21 CFR part 660 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

Subpart K [Removed]

11. Subpart K, consisting of §§ 660.100 through 660.105, is removed.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

12. The authority citation for 21 CFR part 680 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

13. The heading for Subpart A—Allergenic Products is removed.

Subpart B [Removed]

14. Subpart B, consisting of §§ 680.10 through 680.16, is removed.

Subpart C [Removed]

15. Subpart C, consisting of §§ 680.20 through 680.26, is removed.

Dated: July 19, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–19604 Filed 7–31–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 735

Grants for Program Development and Administration and Enforcement

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 700 to End, revised as of July 1, 1995, on page 144, § 735.23 was inadvertently omitted. The omitted text should read as follows:

§ 735.23 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A–102.

BILLING CODE 1505-01-D

30 CFR Part 937

Oregon

CFR Correction

In Title 30 of the Code of Federal Regulations, parts 700 to End, revised as of July 1, 1995, on page 639, § 937.772 was inadvertently omitted. The omitted text should read as follows:

§ 937.772 Requirements for coal exploration.

(a) Part 772 of this Chapter, ''Requirements for coal exploration,'' shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSMRE shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

[52 FR 13812, Apr. 24, 1987]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–84; DA 96–1156]

Assessment and Collection of Regulatory Fees for Fiscal Year 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revised its Schedule of Regulatory Fees on July 1, 1996, in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1996. See *Report and Order in the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, Md Docket 96–84, FCC–295 (released July 5, 1996). The attached *Order* establishes the dates when these regulatory fees must be paid.

EFFECTIVE DATE: August 1, 1996.

DATES: September 30, 1996 for annual fees for Geosynchronous Space Station Licensees, Intelsat and Inmarsat Signatories, and Low Earth Orbit Satellite System Licensees. September 12, 1996, through September 20, 1996, for all other annual fee payors. Beginning on September 12, 1996, for applicants who pay fees in advance in combination with their application fee for new, renewal and reinstatement authorizations in the private wireless services.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Adopted: July 22, 1996
Released: July 24, 1996

1. The Managing Director has determined the dates for collection of the fees adopted in the fiscal year 1996 regulatory fee proceeding. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1996*, FCC–295 (released July 5, 1996), 61 FR 36629 (July 12, 1996). We are establishing collection dates as indicated below.

2. Annual regulatory fees for Geosynchronous Space Station licensees, Intelsat and Inmarsat Signatories, and Low Earth Orbit

Satellite System Licensees are due on *September 30, 1996.*

3. Annual regulatory fees for regulatees in the cable television, common carrier, international (except the three categories listed in paragraph 2 above), mass media, and commercial wireless services are due during the period beginning *September 12, 1996,* and ending *September 20, 1996.* Parties paying these fees electronically are requested to submit them on *September 12th* or *September 13th.*

4. Applicants for new, renewal and reinstatement licenses in the private wireless services which pay annual fees of $7.00 in advance for each year of their license term in combination with the appropriate application fee are to begin paying the new rate on *September 12, 1996.* For private wireless licensees which pay $3.00 in advance for each year of their license term in combination with the appropriate application fee, there is no change and they will continue to do so.

5. Since the time for collecting fees is extremely limited, we are unable to offer installment payments for fiscal year 1996.

6. Accordingly, *it is ordered* That the dates for collection of fiscal year 1996 regulatory fees are as provided in paragraphs 2, 3 and 4 of this Order. This action is taken under delegated authority pursuant to §§ 0.231(a) and 1.1157(b)(1) of the Commission's rules. 47 U.S.C. §§ .231(a) and 1.1157(b)(1).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Federal Communications Commission, Radio, Telecommunications, Television.

Federal Communications Commission

Andrew S. Fishel,

Managing Director.

[FR Doc. 96–19575 Filed 7–31–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: August 1, 1996.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* adopted June 27, 1996, and released July 5, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 255C and adding Channel 255C2 at Montgomery, and by removing Channel 254A and adding Channel 254C2 at Warrior.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 296C2 and adding Channel 297C2 at Rio Del and by removing Channel 299A and adding Channel 299B1 at Twentynine Palms.

4. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 224A and adding Channel 224B1 at Herrin.

5. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 269C3 and adding Channel 269C2 at Duluth.

6. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 252A and adding Channel 252C3 at Carthage.

7. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 225A and adding Channel 225C2 at Espanola, by removing Channel 298C3 and adding Channel 298C1 at Los Almos and by removing Channel 234C and adding Channel 234C1 at Santa Fe.

8. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 237A and adding Channel 237C3 at Lawton.

9. Section 73.202(b), the Table of FM Allotments under Texas is amended by removing Channel 228C3 and adding Channel 228C2 at Breckenridge and by removing Channel 269A and adding Channel 268C2 at Snyder.

10. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 266C2 and adding Channel 2266A at Pinedale.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–19349 Filed 7–31–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960401094–6183–02; I.D. 072496B]

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1996 Closure

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

ACTION: Closure of the fishery.

SUMMARY: NMFS announces the closure of the Northwestern Hawaiian Islands (NWHI) crustacean fishery due to attainment of the harvest guideline for the 1996 fishing season. Further lobster fishing in the NWHI is prohibited until the beginning of the 1997 fishing season on July 1, 1997. This action is intended to prevent overfishing and to achieve optimum yield according to the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

EFFECTIVE DATES: Fishing for lobsters in the NWHI is prohibited from 2400 hours (local time) July 26, 1996, through June 30, 1997. Landings of lobsters taken from the NWHI are prohibited after 2400 hours (local time) July 30, 1996, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, 310–980–4034; or Alvin Z. Katekaru, 808–973–2985.

SUPPLEMENTARY INFORMATION: On July 5, 1996, a harvest guideline of 186,000 spiny and slipper lobsters was published in the Federal Register (61 FR 35145) as the allowable harvest permitted in the NWHI for the 1996 fishing season, which began on July 1. Through July 21, 150,000 spiny and slipper lobsters have been harvested by commercial fishing vessels, mostly at Necker Island. The average daily harvest has been more than 7,800 lobsters. Further harvesting of lobsters is therefore prohibited after 2400 hours (local time) July 26, 1996, when the harvest guideline is projected to be reached, and further landings of lobster taken in Permit Area I are prohibited after 2400 hours (local time) July 30, 1996.

Classification

This action is authorized by 50 CFR 660.50 and is exempt from review under E.O. 12866.

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

Dated: July 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–19540 Filed 7–26–96; 4:57 pm]

BILLING CODE 3510–22–F

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50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 072396C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments From the U.S.-Canadian Border to Cape Falcon, OR

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

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the non-treaty commercial and recreational salmon fisheries in the area from the U.S.-Canadian border to Cape Falcon, OR, will open under the contingency seasons announced in the annual management measures. NMFS announces that the overall treaty Indian ocean quota for coho salmon is modified to 25,000 fish. These actions are necessary to implement ocean salmon fisheries established in the annual management measures.

DATES: Opening of the non-treaty commercial and recreational salmon fisheries under the contingency seasons is effective July 22, 1996, through September 30, 1996. Modification of the treaty Indian coho quota is effective August 1, 1996, through September 30, 1996. Comments will be accepted through August 13, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS (Regional Director), NOAA, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 non-treaty commercial and recreational fisheries north of Cape Falcon, OR, are closed unless the conditions allowing the contingency seasons are met. Specifically, if the Canadian harvest of coho salmon off the west coast of Vancouver Island (WCVI) is determined to be 1.3 million coho or less, contingency seasons recommended by the Pacific Fishery Management Council would be implemented. At a Canadian harvest level between 1.1 million and 1.3 million coho off WCVI, the non-treaty ocean total allowable catch (TAC) would be zero chinook and 75,000 coho (18,800 coho to the commercial fishery and 56,200 coho to the recreational fishery). At a Canadian harvest level of less than 1.1 million coho off WCVI, the non treaty coho TAC could be increased upon the recommendation of the States of Washington and Oregon and the treaty Indian tribes. The contingency seasons and any adjustments to the non-treaty coho TAC would be implemented by the Regional Director using the inseason management authority and process.

On July 19, 1996, agreement was reached between the United States and Canada that the Canadian harvest of coho salmon off WCVI would be less than 1 million fish. This harvest level allows the implementation of the contingency seasons and the consideration of increasing the non-treaty coho TAC. U.S. fishery managers agreed that any additional harvest opportunity on coho salmon would be provided to the inside fisheries instead of the ocean fisheries. Therefore, the non-treaty coho ocean TAC will remain at 75,000 coho, and the contingency seasons will open as described in Tables 1 and 2 of the annual management measures (61 FR 20181, May 6, 1996).

The annual management measures for the treaty Indian troll fisheries initially set the coho quota at 12,500 fish. In accordance with the provisions in the annual management measures for a Canadian harvest level between 1.1 million and 1.3 million coho off WCVI, the Regional Director is raising the treaty Indian coho quota to 25,000 fish.

The Regional Director consulted with representatives of the Washington Department of Fish and Wildlife, Oregon Department of Fish and Game, Pacific Fishery Management Council, and treaty Indian tribes regarding this action. The States of Washington and Oregon will open the non-treaty commercial and recreational fisheries in state waters as provided in the annual management measures for the contingency seasons. The treaty Indian tribes will manage the treaty troll fisheries in accordance with the revised coho quota. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishermen of the opening of the non-treaty commercial and recreational fisheries was given prior to July 22, 1996 (opening date of recreational seasons in two subareas between Leadbetter Point, WA, and Cape Falcon, OR), by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to open these fisheries in a timely manner, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: July 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–19556 Filed 7–29–96; 8:55 am]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 072496C]

Groundfish of the Bering Sea and Aleutian Islands Area; Sharpchin/ Northern Rockfish Species Group in the Aleutian Islands Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of the sharpchin/northern rockfish species group in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of the sharpchin/northern rockfish species group in the Aleutian Islands subarea be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the sharpchin/ northern rockfish species group total allowable catch (TAC) in the Aleutian Islands subarea has been caught.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), July 27, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

In accordance with § 679.20(c)(3)(iii), the sharpchin/northern rockfish species category initial TAC for the Aleutian Islands subarea was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 4,445 metric tons (mt). On May 30, 1996 (61 FR 28072), NMFS closed the directed fishery for the sharpchin/ northern rockfish species category in this area.

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.20(d)(2), that the TAC for the sharpchin/northern rockfish species group in the Aleutian Islands subarea has been reached. Therefore, NMFS is requiring that further catches of the sharpchin/northern rockfish species group in the Aleutian Islands subarea be treated as prohibited species in accordance with § 679.21(b).

Classification

This action is taken under 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–19541 Filed 7–26–96; 4:57 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 072596B]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Eastern Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening the directed fishery for Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific ocean perch in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 31, 1996, until 12 noon, A.l.t., December 31, 1996.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20 (c)(3)(ii), the annual TAC for Pacific ocean perch in the Eastern Regulatory Area of the GOA, was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4304, February 5, 1996) as 2,366 metric tons (mt). The directed fishery for Pacific ocean perch in the Eastern Regulatory Area of the GOA closed to directed fishing under § 679.20 (d)(1)(iii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (61 FR 37225; July 17, 1996). NMFS has determined that as of July 13, 1996, 800 mt remain in the directed fishing allowance.

The Director, Alaska Region, NMFS, has determined that the 1996 directed fishing allowance of Pacific ocean perch in the Eastern Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific ocean perch in the Eastern Regulatory Area of the GOA.

All other closures remain in full force and effect.

Classification

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

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

Dated: July 26, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–19543 Filed 7–31–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 149
Thursday, August 1, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–07–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30 and SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brother Model SD3–30 and SD3–SHERPA series airplanes. This proposal would require inspections of the vertical fin-to-tailplane joint to detect any loose bolts; and, if necessary, inspections to detect elongation of bolt holes, and replacement with new bolts, if necessary. Additionally, the proposal would require inspections of the upper shear angle to detect pulled or loose rivets, and replacement of the shear angle using new rivets, if necessary. This proposal is prompted by reports of loose bolts in the vertical fin-to-tailplane joint and pulled or loose rivets in an upper shear angle. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the vertical fin to tailplane joint due to such discrepancies of the bolts or rivets.

DATES: Comments must be received by September 11, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers plc, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–07–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–30 and SD3–SHERPA series airplanes. The CAA advises that it has received reports of loose bolts that attach the vertical fin to the tailplane; this condition was found on a Model SD3–30 series airplane. Additionally, certain rivets in an upper shear angle were found to be pulled or loose. This condition, if not corrected, could result in reduced structural integrity of the vertical fin to tailplane joint.

The bolts attaching the fin to the tailplane that are installed on Short Brothers Model SD3–30 series airplanes are similar in design to those installed on Short Brothers Model SD3–SHERPA series airplanes. Therefore, the FAA finds that both of these models are subject to the same unsafe condition identified in this proposal.

Explanation of Relevant Service Information

Short Brothers has issued Shorts Service Bulletin SD330–55–18, dated April 20, 1995 (for Model SD3–30 series airplanes), and Shorts SD3 SHERPA Service Bulletin SD3 SHERPA–55–1, dated April 20, 1995 (for Model SD3–SHERPA series airplanes). These service bulletins describe procedures for repetitive visual inspections of the vertical fin-to-tailplane joint to detect any loose bolts. For any airplane on which a loose bolt is found, the service bulletins describe procedures for visual inspections to detect elongation of the bolt holes, and repair, or replacement of the bolts with new bolts, if necessary. Additionally, the service bulletins describe procedures for repetitive visual inspections of the upper shear angle to detect pulled or loose rivets, and replacement of the shear angle using oversize rivets, if necessary. The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive visual inspections of the vertical fin to tailplane joint to detect any loose bolts. For any airplane on which a loose bolt is found, the proposed AD would require visual inspections to detect elongation of the bolt holes, and repair or replacement of the bolt, if necessary. The proposed AD also would require visual inspections to detect elongation of any bolt holes, and repair, if necessary.

Additionally, the proposal would require repetitive visual inspections of the upper shear angle to detect pulled or loose rivets, and replacement of the shear angle using oversize rivets, if necessary.

These actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 66 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 74 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $293,040, or $4,440 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers, PLC: Docket 96–NM–07–AD.

Applicability: All Model SD3–30 and SD3–SHERPA series airplanes, certificated in any category.

Note: 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 prevent reduced structural integrity of the vertical fin to tailplane joint, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a visual inspection to detect loose bolts in the vertical fin to tailplane joint, in accordance with Shorts Service Bulletin SD330–55–18, dated April 20, 1995 (for Model SD3–30 airplanes), or Shorts SD3 SHERPA Service Bulletin SD3 SHERPA–55–1, dated April 20, 1995 (for Model SD3–SHERPA airplanes), as applicable.

(1) If no loose bolt is found, repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours.

(2) If any loose bolt is detected, inspect the bolt for wear and distortion and inspect the hole for elongation, in accordance with the applicable service bulletin.

(i) If the bolt and hole are within the limits specified by the applicable service bulletin, prior to further flight, refit the bolt with a new nut and washers, in accordance with the applicable service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours.

(ii) If the bolt is worn or distorted and the hole is within the limits specified by the applicable service bulletin, prior to further flight, replace the bolt, nut, and washers with a new bolt, a new nut, and a new washers, in accordance with the applicable service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 1,500 flight hours.

(iii) If the hole is elongated within the limits specified in the applicable service bulletin, prior to further flight, oversize the diameter of the hole, and replace the bolt, nut, and washers with a new matching bolt, new nut, and new washers, in accordance with the applicable service bulletin. Repeat the visual inspection thereafter at intervals not to exceed, 1,500 flight hours.

(iv) If the hole is elongated beyond the limits specified in the applicable service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) Within 60 days after the effective date of this AD, perform a visual inspection to detect looseness or pulling of the rivets of attach shear angles SD3–32–0217/K and SD3–32–0218/K. If any looseness or pulling of the rivets is detected, prior to further flight, replace the shear angle using oversize rivets, in accordance with the applicable service bulletin.

(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, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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

all location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 25, 1996.

Darrel M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–19524 Filed 7–31–96; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD–FRL–5545–4]

Notice of Meeting for the Proposed National Volatile Organic Compounds Emission Standards for Architectural Coatings

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA is holding a public meeting to discuss the proposed national volatile organic compounds emission standards for architectural coatings. This meeting is being conducted to provide an opportunity for the EPA to continue dialogue with the architectural coatings industry and obtain additional input on the potential impacts of the proposed rule. The intent is to discuss the proposed rule with particular emphasis on the potential economic and technological impacts to small businesses.

DATES: A public meeting will be held on August 13, 1996, beginning at 10:00 a.m.

ADDRESSES: The public meeting will be held at the Westin Hotel O'Hare, 6100 N. River Road, Rosemont, IL.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Ducey, Coatings and Consumer Products Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, phone number (919) 541–5408.

SUPPLEMENTARY INFORMATION: On June 25, 1996, the EPA proposed the national volatile organic compounds emission standards for architectural coatings and a notice of public hearing for that proposed rule (61 FR 32729). The EPA would like to provide a further opportunity to engage in dialogue with architectural coating manufacturers, particularly with regard to economic and technological impacts of the proposed rule on small manufacturers. Therefore, the EPA is holding a public meeting to discuss the proposed national volatile organic compounds emission standards for architectural coatings and answer any questions concerning the proposed rule.

Docket. Docket No. A–92–18, containing supporting information for the proposed national volatile organic compounds emission standards for architectural coatings, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying. A copy of the proposed rule and the Background Information Document (BID) is also available on the *Technology Transfer Network* (TTN). The TTN is one of the EPA's electronic bulletin boards and provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5472 for up to a 14,400 bits-per-second (bps) modem. The TTN is also accessible through the Internet at ''Telnet ttnbbs.rtpnc.epa.gov.'' If more information on the TTN is needed, call the help desk at (919) 541–5384. The help desk is staffed from 11:00 a.m. to 5:00 p.m., Eastern time. The help desk utilizes a voice menu system at other times.

Dated: July 25, 1996.

John S. Seitz,

Director, Office Air Quality Planning and Standards, Office of Air and Radiation.

[FR Doc. 96–19421 Filed 7–31–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[CC Docket No. 96–150, FCC 96–309]

Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking which seeks comment on proposed measures to satisfy the accounting safeguards requirements, including those for affiliate transactions, of Sections 260 and 271 through 276 of the Telecommunications Act of 1996 (''1996 Act''). These sections outline the conditions under which incumbent local exchange carriers may offer telemessaging and alarm monitoring services and under which the Bell Operating Companies (''BOCs'') may manufacture and sell telecommunications equipment, manufacture customer premises equipment, offer interLATA telecommunications, information, electronic publishing and payphone services. Sections 271 through 274 and 276 of the 1996 Act generally prohibit the BOCs from subsidizing services permitted under those sections with revenues from regulated telecommunications services. Sections 260 and 275 generally prohibit incumbent local exchange carriers, including the BOCs, from subsidizing their telemessaging and alarm monitoring services with revenues from regulated telecommunications services. This action was intended to implement the accounting safeguards provision of the 1996 Act.

DATES: Comments are due on or before August 26, 1996 and Reply Comments are due on or before September 10, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 30, 1996.

ADDRESSES: Comments and Reply Comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Ernestine Creech of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@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.

FOR FURTHER INFORMATION CONTACT: John V. Giusti, Attorney, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0850, or Mark B.

Ehrlich, Attorney, Common Carrier Bureau, Accounting and Audits Division, (202) 418–0850. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted July 17, 1996 and released July 18, 1996, 1996 (FCC 96–309). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington D.C. 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due September 30, 1996. 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: None.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form No.: N/A.

Type of Review: New collection.

Information collection	No. of respondents (approx.)	Estimated time per response (hours/hour)	Total annual burden (hours)
Affiliate Company Books, Records and Accounts	20	6,056.25	121,125
Biennial Federal/State Audit	20	250.00	5,000
Filing Written Contract	[1] 7	1.00	7
Compliance Audit	[1] 7	250.00	1,750
Report of Exceptions	[1] 7	80.00	560
10–K Requirement	[1] 7	1,711.00	11,977

[1] BOCS.

Total Annual Burden: 140,419 hours.

Respondents: Bell Operating Companies and/or incumbent local exchange carriers and/or affiliated companies.

Estimated cost per respondent: $632,500. This cost represents the total annual/startup costs associated with the annual and biennial audits and does not include the burden hour cost of the information collection. Of the $632,500, $316,250 represents our estimate of the biennial Federal/State audit. By definition, this cost will only be incurred once every two years. The total cost also includes a cost of $316,250 which represents our estimate of the annual compliance audit requirement. The $316,250 figure was derived by averaging the range of audit costs ($32,500—$600,000). We expect the actual cost of the audits to vary considerably.

Needs and Uses: The NPRM seeks comments on a number of issues, the resolution of which may lead to the imposition of information collections subject to the Paperwork Reduction Act. the NPRM seeks comment on certain reporting requirements to implement the accounting safeguards provisions of Sections 260 and 271 through 276 of the 1996 Act.

SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING

I. Introduction

1. In February 1996, Congress passed and the President signed the ''Telecommunications Act of 1996.'' This legislation makes sweeping changes affecting all consumers and telecommunications service providers. The intent of this legislation is ''to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.''

2. In this Notice of Proposed Rulemaking (''NPRM''), we consider rules to implement the accounting safeguards provisions of Sections 260 and 271 through 276 of the 1996 Act. Those sections address Bell Operating Company (''BOC'') and, in some cases, incumbent local exchange carrier provision of particular telecommunications and information services.

3. This proceeding is one of a series of interrelated rulemakings that collectively will implement the 1996 Act. Certain of these proceedings focus on opening markets to entry by new competitors. Other proceedings will establish rules for fair competition in the markets that are opened to competitive entry by the 1996 Act.

4. This NPRM focuses on the accounting safeguards that Congress adopted in the 1996 Act to foster the development of robust competition in all telecommunications markets. As discussed more fully below, these safeguards are intended both to protect subscribers to regulated monopoly services provided by the BOCs and, in some cases, other incumbent local exchange carriers against the risk of being forced to ''foot the bill'' for the carriers' entry into, or continued participation in, competitive services, and to promote competition in new markets by preventing carriers from using their existing market power in

local exchange services to obtain an anticompetive advantage in those new markets the carriers seek to enter.

A. Background

5. the 1996 Act permits the BOCs to engage in previously proscribed activities if the BOCs satisfy certain conditions that are intended to prevent them from misallocating costs of their new ventures to subscribers to local exchange access services and from discriminating against their competitors in these new markets. Other incumbent local exchange carriers are subject to similar conditions if they elect to enter or continue to participate in certain markets.

6. In lifting or modifying the restrictions on the BOCs, we believe Congress also recognized that BOC entry into in-region interLATA services, manufacturing and other areas raises serious concerns for consumers and competition, even after a BOC has satisfied the requirements for entry. BOCs currently possess market share for local exchange and exchange access in areas where they provide such services of approximately 99.5 percent as measured by revenues. Other incumbent local exchange carriers have similar market shares within their local exchange and exchange access service areas. Under rate-of-return regulation, price caps with sharing (either for interstate or intrastate services), or price caps that may be adjusted in the future, or if its entitlement to any revenues may be affected by the costs that it classifies as regulated, an incumbent local exchange carrier may have an incentive to misallocate to its regulated core business costs that would be properly allocated to its competitive ventures. While the 1996 Act promotes competition and encourages BOC entry, it also prescribes a judicious mix of structural and non-structural safeguards that are intended to protect ratepayers, consumers and competitors against potential cost misallocation and discrimination. Where BOCs already participate in a market, as with alarm monitoring services and payphone services, or where the Act addresses services other incumbent local exchange carriers may provide, the Act requires compliance with similar safeguards. The purpose of this proceeding is to establish accounting safeguards to constrain potential cost misallocation and discrimination against competitors.

7. Although we could prescribe rules that would completely prevent improper cost allocations by enforcing complete separation between regulated telecommunications operations and new activities, we recognize that it would be difficult, if not impossible, to enforce such rules. Moreover, our success might destroy the potential competitive benefits of the economies of scope that BOCs and other incumbent local exchange carriers could realize, benefits that constitute a major incentive for the BOCs and other incumbent local exchange carriers to enter or continue to participate in these markets. Our task in this proceeding is to protect against improper cost allocations, while allowing the BOCs and other incumbent local exchange carriers to realize their reasonable competitive advantages and ensuring that the consumers of those carriers' regulated telecommunications services are able to share in the carriers' economies of scope.

8. We expect that once competition exists in the local exchange and exchange access services markets and incumbent local exchange carrier revenues are not dependent on costs, the need for the accounting safeguards proposed in this NPRM may vanish. With the advent of competition, we can and will act to eliminate any unnecessary rules. With our adoption of the *Notice of Proposed Rulemaking* to implement Section 251, 61 FR 18311 (April 25, 1996), we have taken a major step to achieve that goal. Reform of other regulations, like price cap rules, jurisdictional separations rules, and the access charge regime, will also move us more quickly toward that goal. In the meantime, while we continue to seek to minimize the burden our rules impose those subject to them, we also will ensure that ratepayers and competition remain protected from cost misallocation and anticompetitive discrimination.

B. Specific Considerations

9. The challenge in setting cost allocation rules that prevent subsidization without eliminating legitimate economies of scope arises because there are some costs that cannot be allocated based on economic cost-causation principles. The greater the economies of scope between or among services, the greater the share of costs that cannot be allocated among them on economic cost-causation principles. Given these circumstances, we believe that the rules we develop for allocating these costs should be clear, consistent, and predictable. They should also assure that subscribers to the BOCs' and other incumbent local exchange carriers' core services share in any economies of scope realized when entering those markets from which they were previously barred or continuing to participate in other markets addressed in the 1996 Act. We believe, for example, that a policy that would permit the BOCs to allocate all common costs of shared facilities to regulated services would pose a risk that subscribers to the BOCs' regulated telecommunications services would pay more than the stand-alone costs of the services they receive, and would thus be subsidizing the BOCs' competitive activities rather than sharing the economies of scope realized because of the BOCs' diversification.

10. It is also essential that the affiliate transactions rules discourage, and facilitate detection of, cost misallocations. Statutory structural separation requirements, like the prohibition on sharing employees or the obligation that all affiliate transactions be ''on an arm's length basis,'' reduce the risk that cost misallocations will accompany BOC entry into manufacturing and interLATA service markets. This protection of ratepayer interests, however, is not cost free. Structural separation restrictions that protect ratepayers also make it more difficult for a BOC or other incumbent local exchange carrier to capture the economies of scope that benefit both regulated and nonregulated service subscribers. Only our success in removing barriers to competition in the BOCs' and other incumbent local exchange carriers' regulated services markets will enable us to remove these restrictions.

11. A threshold question is to what extent, if any, we should rely upon our existing accounting safeguards to achieve our twin goals of protecting subscribers to BOCs' and other incumbent local exchange carriers' regulated telecommunications services against improper cost allocations and competitors against unreasonable discrimination. Those safeguards are found in Parts 32 and 64 of our rules. They consist of cost allocation and affiliate transactions rules that were designed to keep incumbent local exchange carriers from imposing the costs and risks of their competitive ventures on interstate telephone ratepayers, and to ensure that interstate ratepayers share in the economies of scope incumbent local exchange carriers realize when they expand into additional enterprises. As we implement the accounting safeguards provisions of Sections 260 and 271 through 276 of the 1996 Act, for each of these sections, we seek comment on whether our current rules can or should be applied as they are, with some modification, or eliminated. We tentatively conclude that our rules, with the modifications we describe below, will best meet the statutory

requirements of these sections and their underlying goals. We invite comment on this tentative conclusion.

12. In reaching this tentative conclusion, we note our belief that the accounting safeguards this NPRM proposes are no more detailed than those in our current rules except where the 1996 Act requires more detailed safeguards or where our experience with current rules has made clear that more detailed safeguards are necessary to prevent improper subsidization. We invite comment on whether less detailed accounting safeguards would suffice to achieve the aims of Sections 260 and 271 through 276 of the 1996 Act. We note that those urging that we adopt more detailed accounting safeguards than those in our current rules or those specifically mandated by the 1996 Act bear a heavy burden of persuading us to adopt such safeguards.

13. The 1996 Act creates opportunities for competitive entry in the local exchange, exchange access, and interLATA telecommunications markets, among others. These opportunities may affect which accounting safeguards we adopt in two apparently countervailing ways. The incumbent local exchange carrier may be reluctant to increase rates for local exchange and exchange access service if the increases would induce competitive entry in the markets in which it would otherwise continue to have market power. This would militate against the adoption of stringent accounting safeguards. On the other hand, a carrier entering or continuing to participate in a nonregulated market will have an increased incentive to shift the costs and risks of its competitive activities to these regulated services if such shifting permits the carrier to increase the rates for these regulated services. The increased rates would not reduce substantially the carrier's market share for local exchange and exchange access service.

14. Several provisions of the 1996 Act prohibit BOCs, or, in some cases, all incumbent local exchange carriers from using their telephone exchange service and exchange access operations to subsidize their competitive ventures. We believe that Congress's primary intent in prohibiting this subsidization was to protect subscribers to these services from increased rates, and seek commenters' help in determining how best to fulfill that intent. We propose that the accounting safeguards we adopt in this proceeding apply to all services for which Section 260 and 271 through 276 require accounting safeguards.

15. Control over the bottleneck facility may enable a BOC or other incumbent local exchange carrier to engage in predatory behavior. For example, the ability to discriminate in favor of its interexchange affiliate with respect to the price of access (*i.e.*,) charging the affiliate a lower access rate than it charges competing IXCs) could facilitate an incumbent local exchange carrier's engaging in a ''price squeeze,'' In such a situation if the incumbent local exchange carrier's interexchange affiliate lowers its retail rate to reflect its unfair cost advantage, competing IXCs would be forced either to match the price reduction and decrease their profit margins, or to maintain their retail prices at preexisting levels and lose market share (and therefore profits). As a practical matter, an incumbent local exchange carrier can achieve the same result by charging the same price for access to all interexchange providers, while providing a higher quality of service to its affiliate than to competing IXCs. In this case, an IXC that attempted to match the incumbent local exchange carrier affiliate's retail price would lose market share since its lower quality of access would mean that it would be offering a lower quality of interexchange service. A third type of potentially anticompetitive, discriminatory behavior occurs when an incumbent local exchange carrier discriminates in favor of its affiliates when purchasing goods or services. For example, to the extent that the incumbent local exchange carrier is the predominant purchaser of telecommunications equipment that is used in the local exchange network, purchasing such equipment only from its affiliate manufacturing entity could adversely effect the ability of a competitor to operate profitably.

16. We also note that a carrier subject to rate-of-return regulation may have an incentive to engage in predatory pricing, if losses from below-cost pricing in the competitive market can be shifted to its regulated cost of service. We expect, however, that such predatory pricing by a BOC or other incumbent local exchange carrier is unlikely to occur. First, while an incumbent local exchange carrier may possess the legal ability to raise rates in the regulated market to subsidize its competitive activities, the threat of entry into the regulated market may prevent it from doing so. Even if such subsidization were to allow a BOC or other incumbent local exchange carrier to sustain prices below cost for a period of time sufficient to drive out competing IXCs, the local exchange carrier would be unlikely to raise prices above the competitive level, since each IXC's network represents an embedded facility which could be purchased in a bankruptcy proceeding and used if the local exchange carrier affiliates subsequently attempted to raise prices above the competitive level. We invite comment on the extent to which the opportunities to engage in predatory behavior should affect our decisions in this proceeding.

C. Overview of Sections 260 and 271 Through 276

17. In Section 260 and 271 through 276, Congress delineated the conditions under which incumbent local exchange carriers would be permitted to offer telemessaging and alarm monitoring services and under which BOCs would be permitted to manufacture and sell telecommunications equipment, to manufacture customer premises equipment, and to offer interLATA telecommunications, information, alarm monitoring and payphone services. In some cases, separate affiliates are required. In other cases, integrated operation is permitted.

18. Section 260 provides that an incumbent local exchange carrier, including a BOC, the provides telemessaging service ''shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access,'' but does not require a separate affiliate.

19. Section 271(b) authorizes the BOCs to provide ''out-of-region'' interLATA services as of February 8, 1996, even if the services terminate within the BOC's region, and ''in-region'' interLATA services upon Commission approval. Section 271(g) lists specific ''incidental interLATA services'' that BOCs and their affiliates may provide after February 8, 1996. Section 271(h) states that ''[t]he Commission shall ensure that the provision of services authorized under [Section 271(g)] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.''

20. Section 272 permits a BOC (including any affiliate) that is an incumbent local exchange carrier to manufacture equipment (as defined in the AT&T consent decree), originate in-region interLATA telecommunications services, other than incidental and previously authorized interLATA services, and provide certain interLATA information services only if it does so through one or more separate affiliates. Each of the separate affiliates must ''maintain [separate] books, records, and accounts in the manner prescribed by the Commission'' and ''shall conduct all

transactions with the Bell operating company of which it is an affiliate on an arm's length basis.'' In its dealings with the separate affiliate, each BOC must ''account for all transactions * * * in accordance with accounting principles designated or approved by the Commission.''

21. Section 273(d)(3) sets forth an additional separate affiliate requirement for manufacturing of telecommunications equipment and customer premises equipment by entities that certify the same class of telecommunication equipment and customer premises equipment produced by unaffiliated entities.

22. Section 274(a) prohibits any ''Bell operating Company or any affiliate [from] engag[ing] in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service,''other than through ''a separated affiliate or electronic publishing joint venture.'' This separated affiliate or electronic publishing joint venture must, among other requirements, ''maintain separate book, records, and accounts and prepare separate financial statements.''

23. Section 275(b)(2) bars an incumbent local exchange carrier that provides alarm monitoring services from ''subsidiz[ing] its alarm monitoring services either directly or indirectly from telephone exchange service operations,'' but does not require a separate affiliate.

24. Section 276(b)(1)(C) directs the Commission to prescribe rules for BOC payphone service that, ''at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry–III (CC Docket No. 90–623) proceeding.'' Section 276(a)(1) provides that, after the effective date of those rules, any BOC that provides payphone service ''shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations.''

25. Section 254(k) prohibits a telecommunications carrier from ''us[ing] services that are not competitive to subsidize services that are subject to competition.'' Section 254(k) further states that '' [t]he Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.''

D. Structure of This NPRM

26. Section II of this NPRM discusses accounting safeguards that would apply when an incumbent local exchange carrier, including a BOC, provides a service addressed in Sections 260 and 271 through 276 of the 1996 Act on an integrated, or in-house, basis. For the provision of services on an integrated basis, we tentatively conclude in Section II that our existing Part 64 cost allocation rules generally satisfy the 1996 Act's accounting safeguards requirements. Section III discusses accounting safeguards that would apply when an incumbent local exchange carrier, including a BOC, uses an affiliate to provide a service addressed in Sections 260 and 271 through 276 of the 1996. In Section III, we tentatively conclude that, except where the 1996 Act imposes specific additional requirements, our current affiliate transactions rules generally satisfy the statue's requirement of accounting safeguards when an incumbent local exchange carrier conducts transactions with its affiliate. In that section, we do propose several modifications to the affiliate transactions rules to provide greater protection against improper subsidization. Within Sections II and III, subsections discuss issues related to the application of the individual statutory sections. In Section IV of this NPRM, we seek comment on whether and, if so, how price cap regulation alters the need for accounting safeguards to ensure against the subsidization of services permitted under Sections 260 and 271 through 276 of the 1996 Act with revenues from regulated telecommunications services to subsidize other services. In that same section, we seek comment on whether our proposals in this NPRM satisfy the requirements of Section 254(k).

II. Safeguards For Integrated Operations

A. General

27. In this section, we discuss the provisions in Sections 260, 271, 275, and 276 of the 1996 Act relating to accounting safeguards for telemessaging, certain interLATA telecommunications and information, alarm monitoring, and payphone services that the BOCs and other incumbent local exchange carriers might be permitted to provide on an integrated basis (*i.e.*, within the telephone operating companies). We tentatively conclude that our existing Part 64 cost allocation rules generally satisfy the statute's requirement of safeguards to ensure that these services are not subsidized by subscribers to regulated telecommunications services. We invite comment on this tentative conclusion.

28. We developed the cost allocation rules in our *Joint Cost* and *Computer II Proceedings* to help ensure that interstate ratepayers do not bear the costs and risks of the telephone companies' nonregulated activities. These rules prescribe how carriers separate the costs of activities regulated under Title II of the Communications Act of 1934, as amended, from the costs of nonregulated activities, where the nonregulated activities are performed directly by the carrier rather than through an affiliate. Under these rules, incumbent local exchange carriers may not assign the costs of nonregulated activities to regulated products and services. Incumbent local exchange carriers have implemented internal cost allocation systems to help ensure their compliance with these rules. Redesigning these internal systems to accommodate a fundamentally different cost allocation approach might impose substantial administrative and financial costs on the carriers. We seek comment on whether the benefits of a fundamentally different approach to cost allocation would be outweighed by the costs that implementation of such a system would entail. Alternatively, we invite comment on whether, and how, we might adapt the existing cost allocation system to accommodate any or all of the services we address in Section II.B, below.

B. Specific Services

1. Section 260—Telemessaging Service

a. Statutory Language

29. Section 260(a)(1) of the 1996 Act prohibits each ''local exchange carrier subject to the requirements of section 251(c) that provides telemessaging service [from] subsidiz[ing] its telemessaging service directly or indirectly from its telephone exchange service or its exchange access.'' Section 251(c), in turn, applies to every ''incumbent local exchange carrier.'' Section 260(c) defines ''telemessaging service'' as ''voice mail and voice storage and retrieval services, any live operator services used to record, transcribe, or relay messages (other than telecommunications relay services), and any ancillary services offered in combination with these services.'' The principal goal of the prohibition against subsidization in Section 260(a)(1) appears to be to ensure that the telemessaging service operations of incumbent local exchange carriers do not result in increased rates for telephone exchange service and exchange access. Section 260(b) also

requires the Commission to establish procedures for expedited consideration of any complaint alleging ''material financial harm to a provider of telemessaging service.'' In providing for this expedited consideration, Congress intended to protect providers of telemessaging service that are not themselves, or affiliated with, incumbent local exchange carriers against subsidization.

30. Our present Part 64 rules classify telemessaging service as a nonregulated activity for Title II accounting purposes. Consequently, provision of telemessaging services is already governed by our Part 64 rules and, to the extent telemessaging is provided through affiliates, our affiliate transactions rules also apply. Our Part 64 rules require carriers to use a cost allocation methodology based on fully distributed costs (''FDC''). This methodology establishes a hierarchy of cost apportionment rules designed to prevent subsidies. These rules are applied to costs recorded in the accounts specified in the Uniform System of Accounts (''USOA'') set out in Part 32 of our rules. The methodology requires carriers to assign costs directly, wherever possible, to regulated or nonregulated activities. If costs cannot be directly assigned, they are considered ''common costs'' and must be placed in homogeneous cost pools. The carrier must then divide the costs in each pool between regulated and nonregulated activities using formulas or factors known as ''allocators.'' Depending upon the information available, carriers must apply these allocators in the following order. Whenever possible, common costs must be directly attributed based upon a direct analysis of the origins of those costs. Common costs that cannot be directly attributed must be indirectly attributed based on an indirect, but cost-causative, linkage to another cost pool or pools for which a direct assignment or attribution is possible. Only if direct or indirect attribution factors are not available may the carrier allocate a pool of common costs using what is known as a ''general allocator.'' For regulated activities, the general allocator is expressed as the ratio of all expenses directly assigned or attributed to regulated activities (numerator) to all expenses directly assigned or attributed to both regulated and nonregulated activities (denominator).

31. Our Part 64 cost allocation rules also require incumbent local exchange carriers to allocate their network investment plant between activities that we regulate under Title II and nonregulated activities. This allocation must be based on the peak ''relative regulated and nonregulated usage'' projected for the network plant over a three-year period. BOC provision of telemessaging service may result in the reallocation of this plant from regulated to nonregulated activities. In the *Joint Cost Proceeding,* we determined that, absent waiver, any such reallocation ''must be made at undepreciated baseline cost and must include interest calculated at the authorized interstate rate of return.''

32. Section 64.901(b)(4) of our rules requires a carrier at the beginning of each calendar year to forecast peak relative nonregulated use of jointly-used network plant over a three-year period. The relative split between usage for activities regulated under Title II and nonregulated usage at the point in time when nonregulated usage is greatest in comparison to regulated defines the allocation factor to be applied. If application of this method would increase the allocation to nonregulated activities for any account from the previous year, the carrier must make the reallocation. If application of this method would decrease the allocation to nonregulated activities for that account from the previous year, the carrier must obtain a waiver to make the reallocation. At the end of the year, the carriers compare their forecasts with actual usage. If the actual usage of nonregulated activities is greater, they must adjust the allocation to nonregulated services based on that actual usage.

33. We tentatively conclude that applying our Part 64 rules to telemessaging will safeguard against the subsidies prohibited by Section 260(a)(1). Section 260 appears to allow telemessaging service to be provided on an integrated basis, at least for most incumbent local exchange carriers. However, we tentatively conclude, as we do in our companion item, *BOC In-Region NPRM,* that telemessaging is an information service. We also tentatively conclude in that *NPRM,* that our authority under Sections 271 and 272 over interLATA information services applies to intrastate, interLATA information services provided by BOCs or their affiliates. BOC provision of telemessaging service on an interLATA basis would therefore be subject to the separate affiliate and other requirements of Section 272. We invite comment on these tentative conclusions.

b. Scope of Commission's Authority

34. Section 260 of the Act imposes additional safeguards regarding the provision of telemessaging services, not only on the BOCs, but on all incumbent on whether, in light of our tentatilocal exchange carriers. We seek commenve conclusion that Sections 271 and 272 give the Commission jurisdiction over intrastate interLATA information services including telemessaging, Section 260 should also be read to give us jurisdiction over intrastate information services in implementing and enforcing Section 260. We note, however, that unlike Sections 271 and 272, the scope of Section 260 is not limited to interLATA services, nor is it limited to the BOCs. We seek comment, therefore, on whether any such intrastate jurisdiction would extend only to the BOCs, as only BOCs are covered by Sections 271 and 272, or to all incumbent local exchange carriers.

35. We further seek comment on what role States might have in implementing Section 260(a)(1)'s prohibition against subsidization of ''telemessaging service directly or indirectly from * * * telephone exchange service or * * * exchange access.'' Prior to the enactment of the 1996 Act, we did not preempt States from using their own cost allocation procedures for intrastate purposes. We ask commenters to address whether we must change this policy in order to effectuate Section 260.

36. To ensure a complete record, if Section 260 does not itself apply to intrastate services, we also seek comment on whether we have authority to preempt State regulation with respect to the accounting matters addressed by Section 260 pursuant to *Louisiana PSC* and, if so, whether we should exercise that authority. We tentatively conclude that if Section 260 does not apply to intrastate services and if we have authority to preempt pursuant to *Louisiana PSC,* we should refrain from exercising that authority in this area and instead retain our prior policy of not preempting States from using their own cost allocation procedures for intrastate purposes. We invite comment on this tentative conclusion. We ask the commenters to address, in particular whether preemption pursuant to *Louisiana PSC* in this area would be necessary to achieve the intent behind Section 260(a)(1) or whether less intrusive measures would be sufficient.

2. Section 271—InterLATA Telecommunications Services

a. Incidental InterLATA Services

37. Section 271(h) states that ''[t]he Commission shall ensure that the provision of services authorized under [Section 271(g)] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.'' Section

271(g) lists specific incidental interLATA services that he BOCs and their affiliates may provide after the date of enactment of the 1996 Act. Those services are:

> The interLATA provision by a Bell operating company or its affiliate—
> (1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;
> (B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;
> (C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or
> (D) of alarm monitoring services;
> (2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5);
> (3) of commercial mobile services in accordance with section 332(c) of this Act and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;
> (4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;
> (5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or
> (6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

Section 271(h) states that ''[t]he provision of [Section 271(g)] are to be narrowly construed. The interLATA services provided under subparagraph (A), (B), or (C) of [Section 271(g)(1)] are limited to those interLATA transmissions incidental to the provision by a Bell operating company or its affiliate of video, audio, and other programming services that the company or its affiliate is engaged in providing to the public.''

38. Section 271(h) states that ''[t]he Commission shall ensure that the provision of services authorized under [Section 271(g)] by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market.'' We invite comment on whether our present cost allocation rules in Part 64 are adequate to prevent the adverse effects proscribed by Section 271(h) or whether alternative solutions, if any, would be more appropriate. We ask commenters asserting that the rules require modifications to describe in detail the modifications they believe necessary, to explain how these modifications or additions to our Part 64 rules would better enable the Commission to fulfill its obligations under Section 271(h), and to identify the category of ratepayers or competitive markets the proposed modifications or additions would protect.

b. Integrated Provision of InterLATA Services

39. We note that BOCs are permitted to provide certain regulated, interLATA telecommunications services on an integrated basis, including out-of-region services and certain types of incidental services. In our *BOC Out-of-Region Order*, 61 FR 35964 (July 9, 1996), we determined that the BOCs must provide out-of-region interstate, interexchange services (including interLATA and intraLATA services) through separate affiliates, at least on an interim basis, in order to qualify for nondominant regulatory treatment in the provision of those services. Under that *Order*, however, a BOC could still choose to provide these services on an integrated basis, subject to dominant carrier regulation. To ensure against improper subsidization in the event of such operations, we tentatively conclude that we should apply our cost allocation rules to regulated services other than local exchange and exchange access services provided on an integrated basis. We seek comment on this tentative conclusion and on whether we should develop modified cost allocation rules for these other regulated services that the BOCs may provide on an integrated basis to prevent allocation of the costs of these other regulated services to local exchange and exchange access customers and, if so, what these modifications should be. One possible solution would be to require BOCs to create a separate category for regulated services other than local exchange and exchange access services within their internal cost allocation systems. This category would be in addition to the regulated and nonregulated categories our existing rules require and would parallel the approach we took with respect to video dialtone. Alternatively, we could require BOCs to classify any regulated services other than local exchange and exchange access services they provide on an integrated basis as nonregulated activities for Title II accounting purposes. This would parallel the approach we took in the *BOC out-of-Region Order* and would result in the carriers' allocating the costs of these services to the nonregulated category. We invite comment on the relative costs and benefits of these approaches.

40. In our *Interexchange Notice*, 61 FR 14717 (April 3, 1996), we addressed whether we should modify or eliminate the separation requirements independent local exchange carriers must currently meet in order to qualify for non-dominant treatment when they offer interstate, interexchange services originating outside the areas in which they control local access facilities. We also sought comment on whether, if we modified or eliminated these separation requirements for non-dominant treatment of independent local exchange carriers, we should apply the same requirements to BOC provision of out-of-region interstate, interexchange services. If independent local exchange carriers are allowed to, and choose to, provide out-of-region interstate interexchange services on an integrated basis, we seek comment on whether our regulatory treatment for such incumbent local exchange carriers should be similar to the regulatory treatment we adopt for the BOCs.

c. Other Matters

41. Section 272(e)(3) requires that ''[a] Bell operating company * * * impute to itself (if using [exchange] access for its provision of its own services), an amount for access that is *no less than* the amount charged to any unaffiliated interexchange carriers for such service.'' In our *BOC In-Region NPRM*, we seek comment on how to determine the imputed exchange access charges under Section 272(e)(3). We now invite comment on how the BOCs should account for these imputed access charges. One possible approach would be for the BOCs to record these imputed exchange access charges as an expense that would be directly assigned to nonregulated activities with a credit to the regulated exchange access revenue account. We seek comment on this approach as well as suggested alternatives.

42. Section 272(e)(4) states that ''[a] Bell operating company and an affiliate that is subject to the requirements of section 251(c) * * * may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on

the same terms and conditions, and so long as the costs are appropriately allocated.'' Although Sections 272(e)(3) and (e)(4) do not address activities performed on an integrated basis, we invite comment on whether and, if so, how these requirements should affect our rules for allocating costs between activities regulated under Title II and nonregulated activities for those BOCs that provide interLATA services on an integrated basis. We request comment on whether, in view of Section 272(e)(4), we may require BOCs that provide interLATA or intraLATA facilities or services on an integrated basis to provide them to their own internal operation only at the same rates as those facilities or services are made available to all carriers. When those rates differ for different carriers, we seek comment on which rate should be the one that applies to BOC affiliate transactions. We also invite comment on whether we should adopt specific accounting procedures to address the difference, if any, between those rates and ''the costs [that would be] appropriately allocated'' for the underlying facilities or services.

d. Scope of Commission's Authority

43. In the *BOC In-Region NPRM,* we tentatively conclude that this Commission has jurisdiction under Sections 271 and 272 over both interstate and intrastate interLATA services and interLATA information services. That tentative conclusion leads us also to conclude tentatively that we have jurisdiction with respect to accounting matters under those same sections of the 1996 Act. We base our tentative conclusions in the *BOC In-Region NPRM* and in this Notice on the following analysis. Sections 271 and 272 by their terms address BOC provision of ''interLATA'' services and information services. Many States contain more than one LATA, and thus, interLATA traffic may be either interstate or intrastate. Accordingly, we must determine whether Sections 271 and 272, and our authority pursuant to those sections, apply only to interstate interLATA services and interLATA information services, or to both interstate and intrastate interLATA services and interLATA information services.

44.The MFJ, when it was in effect, governed BOC provision of both interstate and intrastate services. The 1996 Act provides:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the [MFJ] shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by [the MFJ].

This section supersedes the MFJ, and explains that the Communications Act is to serve as its replacement. In the *BOC In-Region NPRM,* we find that Sections 271 and 272 of the Act were intended to replace the MFJ as to both interstate and intrastate interLATA services and interLATA information services.

45. Although Sections 271 and 272 make no explicit reference to interstate and intrastate services, they do refer to a different geographic boundary—the LATA, as originally defined by the MFJ and now by the 1996 Act. In the *BOC In-Region NPRM,* we tentatively conclude that the interLATA/intraLATA distinction appears to have supplanted the traditional interstate/intrastate distinction for purposes of these sections.

46. As to interLATA services, the MFJ prohibited the BOCs and their affiliates from providing any interLATA services, interstate or intrastate, unless specifically authorized by the MFJ or a waiver thereunder. Reading Sections 271 and 272 as applying to all interLATA services fits well with the structure of the statute as a whole. Sections 251 and 252 of the Act establish rules and procedures for competitive entry into local exchange markets. In the *Interconnection NPRM,* 61 FR 18311, we tentatively concluded that Congress intended these sections to apply to both interstate and intrastate aspects of interconnection. These new obligations imposed on BOCs (as well as other incumbent local exchange carriers), and enacted at the same time as Sections 271 and 272, clearly are part of the process for entry into the interLATA marketplace. Indeed, BOCs are permitted to provide in-region interLATA services only after they have met the requirements of Section 271, including a competitive checklist requiring compliance with certain provisions in Sections 251 and 252.

47. In the *BOC In-Region NPRM,* we note also that the structure of Sections 271 and 272 themselves indicates that these sections were intended to address both interstate and intrastate interLATA services. For instance, BOCs are directed to apply for interLATA entry on a state-by-state basis, and the Commission is directed to consult with the relevant State Commission before making any determination with respect to an application in order to verify the BOC's compliance with the requirements for providing in-region interLATA services. As we believe it did in Sections 251 and 252, Congress appears to have put in place rules to govern both interstate and intrastate services, and to have provided a role for both the Commission and the States in implementing those rules.

48. We also note in the *BOC In-Region NPRM* that, by contrast, reading Sections 271 and 272 as limited to the provision of interstate services would mean that the BOCs would have been permitted to provide in-region, intrastate, interLATA services upon enactment and without any guidance from Congress as to entry requirements or safeguards, subject only to any pre-existing State rules on interexchange entry. Any such rules, presumably, would not have been directed at BOC entry, which had for many years been prohibited. Concerns about BOC control of bottleneck facilities over the provision of in-region interLATA services are equally important for both interstate and intrastate services. Thus, the reasons for imposing the procedures and safeguards of Sections 271 and 272 apply equally to the BOCs' provision of both intrastate and interstate, in-region, interLATA services. We found it implausible that Congress could have intended to lift the MFJ's ban on BOC provision of interLATA services without making any provision for orderly entry into intrastate interLATA services, which constitute approximately 30 percent of interLATA traffic. Based on the preceding analysis, we tentatively conclude that our authority under Sections 271 and 272 applies to both intrastate and interstate interLATA services and interstate and intrastate interLATA information services provided by the BOCs or their affiliates. We also stated our belief that Section 2(b) of the Communications Act did not require a contrary result because Congress enacted Sections 271 and 272 after Section 2(b) and squarely addressed the issues presented here. We reach the same tentative conclusion here as to accounting safeguards and seek comment on it.

49. We also invite comment on what role States might play in implementing the accounting safeguards provisions of Sections 271 and 272, given this tentative conclusion. We ask commenters to address whether we must change our policy, adopted prior to the enactment of the 1996 Act, of not preempting States from using their own cost allocation procedures for intrastate purposes. We also invite comment on whether, in enacting the accounting safeguards provisions of Sections 271 and 272, Congress intended to eliminate our ability to allow the States to depart from the federal cost allocation

procedures in their regulation of ''charges . . . for or in connection with intrastate communications service[s].''

50. To the extent commenters disagree with the above analysis, we also seek comment on whether we have authority to preempt state regulation with respect to the accounting matters addressed by Sections 271 and 272 pursuant to *Louisiana PSC* and, if so, whether we should exercise that authority. We tentatively conclude that if Sections 271 and 272 do not provide authority over intrastate interLATA services and intrastate interLATA information services and if we have authority to preempt pursuant to *Louisiana PSC,* we should refrain from exercising it in this area and instead retain our prior policy of not preempting States from using their own cost allocation procedures for intrastate purposes. We invite comment on this tentative conclusion. We ask the commenters to address, in particular, whether preemption in this area would be necessary to achieve the intent behind the accounting safeguards provisions of Sections 271 and 272, or whether less intrusive measures would be sufficient.

3. Section 275—Alarm Monitoring Services

51. Section 275(e) defines ''alarm monitoring service'' as ''a service that uses a device located at a residence, place of business, or other fixed premises (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property, from burglary, fire, vandalism, bodily injury, or other emergency, and (2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person . . .'' about the emergency. Section 275(a)(1) delays entry by the BOCs not already providing alarm monitoring services until five years from the date of enactment of the 1996 Act. If a BOC or BOC affiliate provided alarm monitoring services as of November 30, 1995, it may continue to do so, but cannot expand its alarm monitoring business by acquiring ''any equity interest in, or obtain financial control of, any unaffiliated alarm monitoring service entity'' during the five-year period.

52. Section 275(b)(2) specifies that an incumbent local exchange carrier engaged in the provision of alarm monitoring services ''not subsidize its alarm monitoring services either directly or indirectly from telephone exchange service operations.'' As with the prohibition against subsidizing telemessaging services, this prohibition against subsidizing alarm monitoring services specifically applies to incumbent local exchange carriers.

53. We currently require carriers to treat alarm monitoring services as nonregulated activities for Title II accounting purposes. Accordingly, the Part 64 cost allocation rules require incumbent local exchange carriers to allocate the costs of those services to nonregulated activities. We invite comment on whether our present rules are necessary or sufficient to prevent subsidization of alarm monitoring services as defined in Section 275(e). Commenters asserting that our existing rules would not meet this objective should identify with specificity any deficiency in our rules, explain the nature of the deficiency, and describe, in detail, how the rules can be modified to remove that deficiency. We ask commenters asserting that rules are not necessary to identify which rules are not necessary and why they are not necessary.

54. Alarm monitoring, as defined in Section 275(e), appears to fall within the definition of ''information service'' in Section 3(20) of the Act. Alarm monitoring services, however, are specifically exempted from the separate affiliate and nondiscrimination requirements of Section 272. We seek comment on the extent of our authority, if any, under Section 275 over intrastate alarm monitoring services.

55. We further seek comment on what role States might have in implementing Section 275(b)(2)'s prohibition against subsidization of ''alarm monitoring services either directly or indirectly from . . . telephone exchange service operations.'' We ask commenters to address whether we must change our policy, adopted prior to the enactment of the 1996 Act, of not preempting States from using their own cost allocation procedures for intrastate purposes. We also invite comment on whether, in enacting Section 275(b)(2), Congress intended to eliminate our ability to allow the States to depart from the federal cost allocation procedures for alarm monitoring services in the States' regulation of ''charges . . . for or in connection with intrastate communications service[s].''

56. We also seek comment on whether, if Section 275 does not itself preempt, we have authority to preempt State regulation with respect to the accounting matters addressed by Section 275(b)(2) pursuant to *Louisiana PSC* and, if so, whether we should exercise that authority. We tentatively conclude that even if Section 275 does not itself preempt and if we have that authority pursuant to *Louisiana PSC,* we should refrain from exercising it in this area and instead retain our prior policy of not preempting States from using their own cost allocation procedures for intrastate purposes. We invite comment on this tentative conclusion. We ask the commenters to address, in particular, whether preemption in this area would be necessary to achieve the intent behind Section 275(b)(2) or whether less intrusive measures would be sufficient.

4. Section 276—Payphone Services

57. Section 276(a)(1) states that ''any Bell operating company that provides payphone service shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations.'' This prohibition against subsidization is an integral part of Congress's plan ''to promote competition among payphone providers and promote the widespread deployment of payphone services to the benefit of the general public.'' To implement the prohibition, Section 276(b)(1)(C) directs the Commission to prescribe nonstructural safeguards for BOC payphone service that, ''at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90–623) proceeding.'' The Act defines the term ''payphone service'' as ''the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.''

58. We tentatively conclude that we should apply accounting safeguards identical to those safeguards adopted in Computer Inquiry-III to prevent the subsidization of payphone services by BOC telephone exchange service or exchange access operations. We seek comment on this tentative conclusion. Commenters asserting that additional accounting safeguards are necessary to fulfill our responsibilities under Sections 276(a)(1) and (b)(1)(C) should identify the alternative safeguards and explain why they would better prevent the subsidies referred to in Section 276(a)(1).

59. All of the BOCs provide payphone service. In the past, we have treated payphone service as a regulated activity with applicable Part 32 plant, expense, and revenue accounts. This classification appears inconsistent with the mandate in Section 276(b)(1)(C) that we prescribe nonstructural safeguards for payphone service because this past treatment allows payphone investment and expenses to be recorded as costs of the regulated service. We tentatively conclude that the new rules required by

that section should reclassify payphone service as a nonregulated activity so that its costs should be separated from the telephone exchange service and exchange access operations that would continue to be regulated activities. Under this approach, the BOCs would continue to use the Commission's Part 32 accounts to record their payphone service activities, but would classify their payphone investment, expenses and revenues as nonregulated for Title II accounting purposes. We seek comment on this tentative conclusion and overall approach and, in particular, ask whether this proposal would comply with the 1996 Act's mandate to prescribe nonstructural accounting safeguards for the BOCs' payphone services at least equal to those adopted in the Computer Inquire-III proceeding. We also invite comment on whether this approach would prevent the subsidization of ''payphone service'' as defined in Section 276(d) by BOC telephone exchange service or exchange access operations.

60. Section 276 does not prescribe or direct the Commission to prescribe accounting safeguards to govern the provision of payphone service by incumbent local exchange carriers other than the BOCs. We seek comment on whether we can and should require these other incumbent local exchange carriers to reclassify their payphone service operations as a nonregulated activity for Title II accounting purposes.

61. Section 276(c) states that ''[t]o the extend that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.'' Thus, it is clear that the statute itself preempts any State regulations that may be inconsistent with our own. We invite comment on what role States might have in implementing Section 276(a)(1)'s prohibition against subsidization of ''payphone service directly or indirectly from * * * telephone exchange service operations or * * * exchange access operations,'' given this clear statutory language and, in particular, whether in enacting Section 276(c), Congress intended to eliminate our ability to allow the States to depart from the Federal cost allocation procedures in their regulation of ''charges * * * for or in connection with intrastate communications service[s].''

III. Safeguards For Separated Operations

A. General

62. Section 272(a)(2) of the 1996 Act allows BOCs to provide the following services only through a separate subsidiary: manufacturing of telecommunications equipment and customer premises equipment; origination of interLATA telecommunications services, other than incidental, out-of-region, and previously authorized services; and interLATA information services other than electronic publishing and alarm monitoring services. Section 273(d)(3) requires ''any entity which certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity * * * only [to] manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous eighteen months, certification activity for such class of equipment through a separate affiliate.'' Section 274(a) requires that BOCs providing electronic publishing must do so only through a ''separated affiliate'' or electronic publishing joint venture. These requirements for ''separate'' or ''separated'' affiliates or joint ventures implicitly assume that structural safeguards limit the carrier's ability to engage in subsidization.

63. In this section, we discuss the accounting safeguards needed to prevent subsidization where telephone operating companies do business with their nonregulated and regulated affiliates. In the *Joint Cost Order,* 52 FR 6557, we adopted rules to govern the way costs are recorded, for Title II accounting purposes, when a regulated carrier does business with nonregulated affiliates. The affiliate transactions rules are designed to protect interstate ratepayers from subsidizing the competitive ventures of incumbent local exchange carrier affiliates. The affiliate transactions rules do not require carriers or their affiliates to charge any particular prices for assets transferred or services provided; rather, the rules require carriers to use certain specified valuation methods in determining the amounts to record in their Part 32 accounts, regardless of the prices charged.

64. We tentatively conclude that, except where the 1996 Act imposes specific additional requirements, our current affiliate transactions rules generally satisfy the statute's requirement of safeguards to ensure that these services are not subsidized by subscribers to regulated telecommunications services. We invite comment on this tentative conclusion. We have previously concluded that these rules provide effective safeguards against subsidization. Incumbent local exchange carriers have implemented internal accounting systems for affiliate transactions to help ensure their compliance with these rules. Redesigning these internal systems to accommodate a fundamentally different approach to affiliate transactions accounting systems would impose substantial costs on the carriers. We seek comment on these matters and, in particular, on whether the benefits of any fundamentally different approach to affiliate transactions would be outweighed by the costs that implementation of such a system might entail.

65. Although we do not propose an approach for affiliate transactions that is fundamentally different from our existing rules, we seek comment on whether we should modify our affiliate transactions rules in certain respects. The Commission and the telephone industry have had more than eight years experience with the cost allocation regime created by the *Joint Cost Order,* 52 FR 6557 (March 4, 1987). This experience has made us aware that amending certain aspects of the affiliate transactions rules might provide more optimal protection against subsidization. In 1993, we released an *Affiliate Transactions Notice,* 58 FR 62080 (November 24, 1993), proposing such rule changes, including changes in how subject carriers would value for Title II accounting purposes services they provide, or receive from, nonregulated affiliates. We invite comment on whether, in implementing the 1996 Act's provisions regarding subsidization, we should amend the current affiliate transactions rules to incorporate certain of the modifications proposed in the *Affiliate Transactions Notice.* We discuss these modifications below. We also invite comment on whether any additional changes to those rules might be necessary or appropriate to implement the requirements of the 1996 Act.

66. As a general matter, we solicit comment on how and to whom the affiliate transactions rules should be applied. For example, we could apply the accounting safeguards for affiliate transactions discussed in this NPRM only to those entities that engage in activities for which the 1996 Act requires the use of a separate or separated subsidiary. We could also extend application of these safeguards to those incumbent local exchange

carriers that engage in activities for which the 1996 Act allows, but does not require, the use of a separate subsidiary. We discuss these approaches below. Finally, we invite comment on whether we should also apply any modifications to our affiliate transactions rules that we make in this proceeding to all transactions between incumbent local exchange carriers and their affiliates.

B. Specific Services

1. Section 272—Manufacturing and InterLATA Services

a. Statutory Language

67. Section 272(a) prohibits a ''Bell operating company (including any affiliate) which is a local exchange carrier that is subject to the requirements of section 251(c)'' from ''provid[ing] any service described in [Section 272(a)(2)] unless it provides that service through one or more affiliates that (A) are separate from any operating company entity that is subject to the requirements of section 251(c); and (B) meet the requirements of [Section 272(b)].'' Section 272(a)(2) states that:

> [T]he services for which a separate affiliate is required by [Section 272(a)(1)] are: (A) [m]anufacturing activities (as defined in section 273(h); (B) [o]rigination of interLATA telecommunications services, other than (i) incidental interLATA services described in [Section 271(g)(1)–(3) and (5)–(6)]; (ii) out-of-region services described in section 271(b)(2); or (iii) previously authorized activities described in section 271(f); [and] (C) [i]nterLATA information services, other than electronic publishing (as defined in section 274(h)) and alarm monitoring services (as defined in section 275(e)).

Section 272(b)(2) requires each of these separate affiliates to ''maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate.'' Under Section 272(b)(5), each of these separate affiliates must ''conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis with any such transactions reduced to writing and available for public inspection.'' Pursuant to Section 272(c)(2), BOCs must account for all transactions with these affiliates ''in accordance with accounting principles designated or approved by the Commission.''

b. Accounting Requirements of Sections 272 (b)(2) and (c)(2)

68. Section 272(b)(2) requires the separate affiliates prescribed under Section 272(a)(2) to ''maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the [BOC] of which it is an affiliate.'' We invite comment on the steps we should take to implement this provision and, in particular, whether we should mandate that the separate affiliates required under Section 272(a)(2) maintain their books, records, and accounts in accordance with generally accepted accounting principles (''GAAP''). We ask the commenters to address whether it is necessary to adopt any additional accounting, bookkeeping, or record keeping requirements for these affiliates and, if so, what those additional requirements should be.

69. Pursuant to Section 272(c)(2), BOCs must account for all transactions with their separate affiliates required under Section 272(a)(2) ''in accordance with accounting principles designated or approved by the Commission.'' We invite comment on how we should implement this provision. To ensure that the amounts recorded in Part 32 accounts are based on reliable financial data, the *Affilitate Transactions Notice* proposed that, except as otherwise ordered by this Commission, all accounting related to affiliate transactions must comply with GAAP. We invite comment on whether requiring such accounting would assist us in fulfilling our statutory obligation to ensure that each affiliate required under Section 272(a)(2) will ''conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis'' and, if so, whether we should adopt such a requirement.

c. ''Arm's Length'' Requirement of Section 272(b)(5)

70. Section 272(b)(5) of the 1996 Act requires that transactions between the BOC and its affiliate engaged in the manufacturing activities, origination of interLATA telecommunications services, and interLATA information services described in Section 272(a)(2) be conducted on ''an arm's length'' basis. In the *Computer II Final Decision*, 45 FR 24694, we required AT&T to provide enhanced services and customer premises equipment only through a ''separate corporate entity'' that would ''deal with any affiliated manufacturing entity only on an *arm's length*'' basis. We stated that ''the transfer of any products'' between this separate corporate entity and ''any affiliated equipment manufacturer must be done at a price that is compensatory.'' We also stated that, ''[t]o police this requirement, we [would] require that any transaction between the enhanced services subsidiary and any other affiliate which involves the transfer (either directly or by accounting or other record entries) of money, personnel, resources or other assets be recorded in auditable form.'' We invite comment on whether we should adopt similar requirements to implement Section 272(b)(5). We also invite comment on whether a requirement that prices be compensatory would be consistent with the Congressional intent behind Section 272(b)(5) and, in particular, any intent that ratepayers of regulated services benefit from the economies of scope from BOC manufacturing, origination of interLATA telecommunications services, and interLATA information services activities.

71. In *Computer III*, we reexamined our regulatory regime for the provision of enhanced services and replaced the *Computer II* requirements with a series of nonstructural safeguards. These safeguards included the Part 64 cost allocation rules and the affiliate transactions rules that we developed in the *Joint Cost Order*. The latter prescribe how incumbent local exchange carriers other than average schedule companies must value their affiliate transactions for Title II accounting purposes. These rules direct subject carriers to use different methods for valuing assets transferred and services provided. For asset transfers, the rules require that they us one of four methods: (1) tariffed rates; (2) prevailing company prices; (3) net book cost; and (4) estimated fair market value. Carriers must record each asset transferred to an affiliate pursuant to tariff at the tariffed rate. If an affiliate that sells a non-tariffed asset to its regulated carrier also sells the same kind of asset to third parties at a generally available price, the carrier must record the asset transfer at that prevailing company price. All other asset transfers must be recorded at the higher of net book cost and estimated fair market value when the carrier is the buyer (*i.e.*, from the affiliate). The United States Court of Appeals for the District of Columbia Circuit affirmed the valuation methods for asset transfers, finding them ''reasonably designed to prevent systematic abuse of ratepayers.''

72. The affiliate transactions rules authorize three valuation methods for determining the amounts carriers should record in their Part 32 accounts for services they provide to or obtain from affiliates: (1) tariffed rates; (2) prevailing company prices; and (3) fully distributed costs. Carriers must record services provided to an affiliate pursuant to tariff at the tariffed rate. If an affiliate provides a non-tariffed service to its regulated carrier that it also provides to third parties, the carrier

must record the transaction at the prevailing company price. All other affiliate services must be recorded at the service provider's fully distributed costs.

73. As stated above, the Commission has released an *Affiliate Transactions Notice* that proposes certain rule changes to provide greater protection against subsidization. We discuss certain of these proposed changes below. We solicit comment concerning whether our affiliate transactions rules, with the proposed changes, would be necessary or sufficient to ensure compliance with the ''arm's length'' requirement of Section 272(b)(5).

74. We also seek comment on whether and, if so, how we should amend our rules to address Section 272(b)(5)'s requirement that all transactions be ''reduced to writing and available for public inspection.'' We ask the commenters to address in particular whether Internet access to information about these transactions would be sufficient to comply with this requirement ''for public inspection.'' We also invite commenters to suggest any other methods we could implement to comply with Section 272(b)(5). We seek further comment about whether we need to adopt safeguards to protect any sensitive or confidential information that these publicly available documents may contain.

75. We note that Section 272(e)(1) requires a ''Bell operating company and an affiliate that is subject to the requirements of section 251(c)'' to ''fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access service within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates.'' We interpret ''transactions'' under Section 272(b)(5) to include requests by an affiliate to its BOC for telephone exchange service or exchange access. We seek comment on this interpretation. We also seek comment on whether we should require information about such transactions to be made publicly available and, if so, whether we need to adopt safeguards to protect any sensitive or confidential information related to such transactions.

i. Identical Valuation Methods for Assets and Services

76. In the *Joint Cost Order,* we did not prescribe uniform valuation methods for all affiliate transactions. In particular, if an asset transfer was neither tariffed nor subject to prevailing company prices, we required carriers to record the transfer at the higher of net book cost and estimated fair market value when it is the seller, and at the lower of net book cost and estimated fair market value when the carrier is the purchaser. In contrast, the Commission required carriers to record all non-tariffed services other than those having prevailing company prices at the providers' fully distributed costs.

77. If we apply our affiliate transactions rules, with the changes proposed in this Notice, to transactions between the BOC and its affiliates engaged in the manufacturing, origination of interLATA telecommunications services and interLATA information services described in Section 272(a)(2) of the 1996 Act, we believe we should consider prescribing uniform valuation methods for all affiliate transactions. In the *Affiliate Transactions Notice,* we tentatively concluded that our treatment of the provision of services that are neither tariffed nor subject to prevailing company prices may reward a carrier's imprudent acts of buying services for more than, and selling services for less than, fair market value. By requiring carriers to record services they sell to nonregulated affiliates at the carriers' fully distributed costs even when those costs are less than what non-affiliates would pay the carriers, the rules motivate carriers to sell services for less than fair market value. Similarly, by permitting carriers to record services purchased from nonregulated affiliates at the affiliates' fully distributed costs, even when those costs exceed what the carriers would pay non-affiliates, the rules motivate carriers to pay more than fair market value for services. If these increased costs are reflected in rates for regulated telecommunications services, ratepayers may be harmed. Ratepayers and service providers not affiliated with carriers may also be harmed if the valuation methods for affiliate transactions induce carriers and their affiliates to ''use services that are not competitive to subsidize services that are subject to competition,'' thereby putting service providers not affiliated with the carrier at a competitive disadvantage.

78. Because of the concerns identified in the preceding paragraph, we believe that the current rules regarding the valuation of affiliate services may not be consistent with the requirement of Section 272(b)(5) for ''transactions * * * on an arm's length basis.'' Requiring that affiliate transactions that do not involve tariffed assets or services be recorded at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and at the lower of cost and estimated fair market value when the carrier is the buyer or transferee appears more likely to achieve these statutory objectives. We propose to continue to define the applicable cost benchmarks as net book cost for asset transfers and fully distributed costs for service transfers. Our proposed rule, viewed in light of other changes detailed below, would form part of a rational and streamlined approach to affiliate transactions. This proposed rule would also reduce the incentive to record an affiliate transaction as a provision of a service, rather than an asset transfer, especially in the context of procurement activities. We seek comment on whether these modifications would better meet the objectives of Section 272. We also ask commenters to discuss whether, and under what circumstances, we should allow carriers and their affiliates to use any alternative valuation methods. We also seek comment on how the elimination of a sharing obligation from our price cap rules would affect the validity of our tentative conclusion in the *Affiliate Transactions Notice* that our treatment of the provision of services that are neither tariffed nor subject to prevailing company prices may reward a carrier's imprudent acts of buying services for more than, and selling services for less than, fair market value.

79. Section 272(e)(3) requires that ''[a] Bell operating company and an affiliate that is subject to the requirements of section 251(c) * * * shall charge the affiliate described in subsection (a) or impute to itself (if using the access for its provision of its own services), an amount for access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.'' Section 272(e)(4) states that ''[a] Bell operating company and an affiliate that is subject to the requirements of section 251(c) * * * may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated.'' We invite comment on how these requirements should affect our rules for implementing the ''arm's length'' requirement of Section 272(b)(5). We also invite comment on whether we should adopt specific accounting procedures to address the difference, if any, between the rates charged by BOCs when they provide interLATA or intraLATA facilities or services on a separated basis and ''the costs [that would be] appropriately allocated'' for the underlying facilities or services.

ii. Prevailing Company Prices

80. The prevailing price method describes the use of the price at which a company offers an asset or service to the general public to establish the value of the affiliate transaction. Generally, when a carrier transfers assets or provides services to an affiliate or the affiliate transfers assets or provides services to the carrier and either the carrier or affiliate conducts similar transactions with the non-affiliates, the transfer or service price with non-affiliates should become the benchmark price for defining the value of the transaction. Although the prevailing price appears to represent the price that would be paid in an arm's length transaction, prevailing price in affiliate transactions may not reflect fair market value primarily because of the different nature of affiliate and non-affiliate transactions. In competitive markets, companies devote significant resources to retaining and attracting customers including sales presentations, advertising campaigns, discounts for volume purchases, or long-term commitments. Most affiliate transactions, however, take place in an entirely different environment. Sales between affiliates generally do not require extensive marketing efforts and involve lower transactional costs than sales to non-affiliates. We invite comment on whether affiliate transactions conducted ''on an arms's length basis'' will necessarily entail the same marketing efforts and transactional costs as sales to non-affiliates. We also invite comment on what, if any, effect any differences in those efforts and costs should have on our decision regarding the use of the prevailing price method for recording affiliate transactions between BOCs and their affiliates engaged in manufacturing, interLATA telecommunications origination and interLATA information services as described in Section 272(a)(2).

81. Our experience with the prevailing price method has revealed the difficulty of defining what constitutes a prevailing price. When a nonregulated affiliate transfers assets or provides services to the carrier and non-affiliates, the question becomes what percentage of an affiliate's overall business must be provided to non-affiliates in order to establish a prevailing company price. If the percentage of third-party business is small, there may not be enough participants in the market to ensure that the price equals the price the carrier and the affiliate would have negotiated ''on an arm's length basis.'' In such situations, using prevailing prices to value asset transfers could permit affiliates to charge inflated prices to the BOC. This would allow nonregulated affiliates to receive added revenue that could permit the nonregulated affiliate to price other competitive assets and services lower to the detriment of fair competition. An additional problem in determining a prevailing price arises because of the nature of the products and services that an affiliate may transfer. ''[R]egulatory requirements that [BOCs] buy equipment competitively crumble quickly when the product being purchased is technically complex and readily differentiated.''

82. We, therefore, seek comment on the benefits of our proposal to amend our affiliate transactions rules to eliminate the valuation of affiliate transactions based on prevailing prices for transactions between a BOC and its affiliates engaged in the manufacturing, interLATA telecommunications origination and interLATA information services described in Section 272(a)(2). Under this proposal, transactions from the carrier to the nonregulated affiliate would be recorded at tariffed rates, if applicable, or at the higher of fair market value or fully distributed cost. Transactions from the nonregulated affiliate to the carrier would be recorded at the lower of fully distributed cost or fair market value.

iii. Estimates of Fair Market Value

83. In prior portions of this NPRM, we propose to adopt identical valuation methodologies for assets and services which would require the carrier to record most affiliate transactions at the higher of net book cost and estimated fair market value when the carrier is the seller, and at the lower of net book cost and estimated fair market value when the carrier is the buyer. These proposals implicitly assume that there is an observable fair market value for any assets and services that a carrier and its nonregulated affiliates might provide each other, and that reasonable efforts will enable the carrier to discover that value. We believe that the procedures carriers use in estimating fair market value should vary with the circumstances of the transaction and consequently that we should not specify the methodologies that carriers must follow to estimate fair market value. We instead propose to require carriers to make good faith determinations of the fair market value, where such a valuation is required under the affiliate transactions rules. While this methodology will limit appraisals to transactions, such as building sales and other transfers of major assets, for which nonregulated companies obtain appraisals in the normal course of business, we believe a more stringent approach would impose unnecessary burdens and costs on the BOCs and other incumbent local exchange carriers. We believe that a good faith requirement would help ensure that affiliates covered by Section 272 ''conduct all transactions with the [BOC] of which it is an affiliate on an arm's length basis.''

84. While we propose not to prescribe methodologies for estimating fair market value, we seek comment on whether we should set criteria for determining what constitutes a good faith estimate of fair market value. For example, if a transaction is subject to reasonable independent valuation methods, we believe that carriers should continue to ascertain fair market value by applying these methods to demonstrate their good faith. If companies making certain purchases routinely solicit competitive bids, survey potential suppliers, or obtain independent appraisals, companies should continue to employ these methods to determine fair market value. Thus, carriers could support affiliate transactions involving real estate transfers by means of independent appraisals.

85. In situations involving transactions that are not easily valued, we seek comment on whether we should still require carriers to support their valuations by reasonable and appropriate methods. For example, for some assets or services a carrier might determine that an independent appraisal would be difficult, if not impossible, to obtain or be prohibitively expensive. In this case, a good faith attempt to ascertain fair market value might include supporting the transaction with computations or studies that utilize methods and principles that an independent appraiser would apply. This could mean, if possible, obtaining comparable sales information, computing values by applying a responsible capitalization rate on cash flow, or determining replacement value. We note that nothing discussed in this Notice would exempt carriers from their statutory obligation under Section 220(c) to justify their accounting entries. We invite comment on our proposal to allow good faith attempts to determine fair market value in affiliate transactions.

iv. Tariffed-based Valuation

86. Finally, we seek comment about the status of tariff-based valuation if incumbent local exchange carriers are not required to provide interconnection and collocation services and network elements pursuant to tariffs. Under Section 252, it may be that the BOC

would submit agreements adopted by negotiations or arbitration to State commissions for approval or rejection without ever filing a tariff. Alternatively, the BOCs may file statements of generally available terms pursuant to Section 252(f) that would state the terms on which these LECs would provide services to all customers who desire them. We seek comment on whether, and the extent to which, our affiliate transactions rules should be amended to substitute rates appearing in such publicly filed agreements and statements for tariffed rates where affiliates could subscribe to services under such generally available terms. We also seek comment on whether such amendments would be consistent with, or required by, Sections 272(e)(3) and 272(e)(4).

v. Return Component for Allowable Costs

87. In the *Joint Cost Proceeding*, the Commission determined that fully distributed costs should include a return on investment, but no ''profit'' in excess of the return then prescribed for the carrier's interstate regulated activities. Consequently, carriers that utilize fully distributed cost to value affiliate transactions include in their cost computations a component for rate of return. We believe we should consider allowing all carriers providing directly, or indirectly through an affiliate, the services that are the subject of Section 272 to use a uniform rate of return to value affiliate transactions. Adopting numerous rates of return would impose a significant compliance burden on the industry. In addition, the use of various rates of return could favor certain telecommunications service providers and disadvantage others. Moreover, allowing carriers to determine their own rate of return would increase the likelihood that an affiliate will fail to ''conduct all transactions with the [BOC] of which it is an affiliate an arm's length basis[,]'' as required by Section 272(b)(5). From a regulatory standpoint, the Commission would have a difficult, if not impossible, burden if it had to engage in numerous prescription proceedings and then monitor compliance with each.

88. The Commission has prescribed a unitary, overall rate of return for those incumbent local exchange carriers still subject to rate-of-return regulation to use in computing interstate revenue requirements, unless a carrier can show that such use would be confiscatory. The current prescribed rate of return on interstate services is 11.25 percent. Because the rate-of-return represcription will not affect either the price cap indices or the sharing zones for carriers subject to price cap regulation, the impact of any represcription of this rate of return on price cap LECs would be limited. In addition to affecting cost calculations for affiliate transactions, as we propose above, a represcription may change the amounts that price cap LECs receive from the universal service fund or pay for long-term support of NECA's common line pool and the amounts those LECs pay the telecommunications relay services fund to give persons with hearing or speech impairments full access to the voice communications network. We seek comment on whether we should require the BOCs to use the prescribed interstate rate of return for valuing their transactions with their affiliates engaged in the manufacturing activities, in-region telecommunications services origination and interLATA information services described in Section 272(a)(2).

d. Application to InterLATA Telecommunications Affiliates

89. We propose to apply our affiliate transactions rules to transactions between a BOC and any affiliates it establishes under Section 272(a) Under that provision, a BOC, including any affiliate, ''which is a local exchange carrier that is subject to the requirements of section 251(c)'' may not provide in-region interLATA telecommunications services, interLATA information services, or manufacturing unless it provides those services through one or more affiliate. Any transactions between a BOC and its interLATA information services or manufacturing affiliates would be subject to our existing affiliate transactions rules, because neither interLATA information services nor manufacturing are regulated activities under Title II. InterLATA telecommunications services, however, are regulated under Title II, and, absent a Commission requirement to the contrary, the affiliates that offer those services would therefore classify interLATA telecommunications services as regulated for Title II accounting purposes. Our existing affiliate transactions rules are solely designed for transactions between regulated carriers and their nonregulated affiliates. To help protect against improper subsidization, we have already determined that out-of-region interstate, interexchange services provided by BOC affiliates should be treated as nonregulated for accounting purposes. Thus, our affiliate transactions rules apply to transactions between the BOCs and those affiliates. Because BOC in-region interLATA telecommunications services also present a potential for improper subsidization, we tentatively conclude that we should apply our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications services affiliate it establishes under Section 272(a). We invite comment on this tentative conclusion. We also invite comment on whether and how we should adapt our affiliate transactions rules if applied to such transactions and, in particular, whether we should adopt special valuation methodologies for these transactions to recognize the regulated status of the affiliates on both sides of the transactions.

90. Section 272 does not prohibit a BOC from providing manufacturing and interLATA information services described in Section 272(a)(2) through the same affiliate by which it provides origination of interLATA telecommunications services described in the same section. It also does not prohibit that affiliate from engaging in other activities not regulated under Title II. We seek comment on whether in this context we should apply our cost allocation rules to prevent subsidization of nonregulated activities, including manufacturing and interLATA information services, by subscribers to interLATA telecommunication services. In particular, we seek comment on what, if any, authority Section 254(k) extends to our application of our cost allocation rules to affiliates engaged in regulated and nonregulated activities.

e. Application to Joint Marketing

91. Although Section 272(b)(3) requires [the affiliate] to ''have separate officers, directors, and employees from the Bell operating company of which it is an affiliate,'' Section 272(g)(2) allows the BOC to ''market or sell interLATA service provided by an affiliate required by [Section 272] . . . [after] such company is authorized to provide interLATA services in such State under section 271(d).'' In our companion *BOC In-Region NPRM*, we seek comment on whether an affiliate may share marketing personnel with a BOC, and if so, what corporate and financial arrangements are necessary to comply with sections 272(b)(3), 272(b)(5) and 272(g)(2). If an affiliate may share marketing personnel with a BOC, we tentatively conclude that we should apply our cost allocation and affiliate transactions rules, as we propose to modify them in this Notice, to any joint marketing on interLATA and local exchange services. We seek comment whether and the extent to which any

additional accounting safeguards may be necessary.

f. Audit Requirements

92. Section 272(d) states that companies required to maintain a separate affiliate under Section 272 ''shall obtain and pay for a Federal/State audit every 2 years conducted by an independent auditor to determine whether such company complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under [Section 272(b)].'' The independent auditor ''shall submit the results of the audit to the Commission and to the State commission of each State in which the company audited provides service, which shall make such results available for public inspection.'' Interested persons may then submit comment on the final audit report.

93. We tentatively conclude that the independent auditor's report should be filed with the Commission and each relevant State commission and should include a discussion of: (1) the scope of the work conducted, with a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the auditor's conclusion whether examination of the books has revealed compliance or non-compliance with the affiliate transactions rules and any non-discrimination requirements in the Commission rules; (3) any limitations imposed on the auditor in the course of its review by the affiliate or joint venture or other circumstances that might affect the auditor's opinion; and (4) a statement by the auditor that the carrier's cost allocation methodologies conform to the Communications Act of 1934, as amended, and the Commission's rules and that the carrier has accurately applied the methodologies described in those rules. We seek comment on the necessity or desirability of using such an approach to satisfy the requirements of Section 272(d). We also seek comment on whether the independent auditor's report should address whether the carrier has complied with Sections 272(e)(3) and 272(e)(4).

g. Scope of Commission's Authority

94. Section 272 of the 1996 Act, by its terms, covers transactions between a BOC and its affiliates engaged in the manufacturing activities, origination of interLATA telecommunications services, and interLATA information services described in Section 272(a)(2). As we have done in the *BOC In-Region NPRM,* we believe that each of these activities requires a different analysis. We state elsewhere in this Notice our tentative conclusions and analysis regarding telemessaging, interLATA telecommunications services, and manufacturing activities. We also tentatively conclude that we should apply our analysis for telemessaging to other interLATA information services covered by Section 272. We seek comment on this tentative conclusion.

2. Section 273—Manufacturing by Certifying Entities

a. Statutory Language

95. Section 273(d) of the 1996 Act requires certain standard-setting organizations to maintain separate affiliates in order to engage in certain types of manufacturing. Under Section 273(d)(3), when such a standard-setting organization certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity, the certifying entity ''shall only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous eighteen months, certification activity * * * through a separate affiliate.'' [N]otwithstanding [Section 273(d)(3)],'' Section 273(d)(1)(B) prohibits ''Bell Communications Research, Inc., or any successor entity or affiliate'' from ''engag[ing] in manufacturing telecommunications equipment or customer premises equipment as long as it is an affiliate of more than 1 otherwise unaffiliated [BOC] or successor or assign of any such company.''

96. Section 273(d)(3)(B) requires the separate affiliate to ''maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles[,]'' and to ''have segregated facilities and separate employees'' from the certifying entity. Section 273(g) permits ''[t]he Commission [to] prescribe such additional rules and regulations as the Commission determines necessary to carry out the provisions of this section, and otherwise to prevent discrimination and cross-subsidization in a [BOC's] dealings with its affiliates and with third parties.''

b. Comparison of Sections 273 and 272

97. Both Sections 272 and 273 require the use of a separate affiliate to engage in different specified activities. We have already proposed accounting safeguards to govern transactions between a BOC and its affiliate engaged in the manufacturing, origination of interLATA telecommunications services and interLATA information services described in Section 272(a)(2). Section 273 requires a standard-setting organization that certifies telecommunications equipment or customer premises equipment manufactured by an unaffiliated entity to ''only manufacture a particular class of telecommunications equipment or customer premises equipment for which it is undertaking or has undertaken, during the previous eighteen months, certification activity * * * through a separate affiliate.'' Section 273(d)(3)(B) requires that the separate affiliate of the standard-setting organization ''maintain books, records, and accounts separate from those of the entity that certifies such equipment, consistent with generally acceptable accounting principles[,]'' and to ''have segregated facilities and separate employees'' from the certifying entity. As a threshold question, we seek comment on whether and, if so, how Section 273's different statutory language requires or permits different accounting treatment from that required or permitted for BOCs under Section 272. Specifically, we seek comment whether we should apply our affiliate transactions rules, as we propose to modify them, to transactions between a certifying entity and the affiliate it must maintain under Section 273(d). We note that our existing rules would not cover transactions between a certifying entity and its affiliate where that certifying entity is not also a regulated carrier. We, therefore, seek comment on whether, and to what extent, we should modify our affiliate transactions rules to govern such transactions.

98. In addition to the accounting safeguards for BOC entry into manufacturing set forth in Section 272 as discussed above, we note that Section 273(g) specifically authorizes ''[t]he Commission [to] prescribe such additional rules and regulations as the Commission determines necessary * * * to prevent cross-subsidization in a [BOC's] dealings with its affiliates and with third parties.'' We tentatively conclude that application of our affiliate transactions rules, as we propose to modify them, to BOCs engaged in activities under Section 273 would be sufficient to satisfy this provision of the 1996 Act. We seek comment on this tentative conclusion.

c. Scope of Commission's Authority

99. Section 273 provides that a BOC may manufacture and provide telecommunications equipment and

customer premises equipment if the Commission authorizes that BOC to provide interLATA services under Section 271(d). Section 273 also sets out safeguards for BOC manufacturing activities. We tentatively conclude that the provisions of this section apply to all BOC manufacturing activities, irrespective of any jurisdictional distinction. First, much like Sections 271 and 272, Section 273 sets the conditions for BOC entry into manufacturing. Thus, as with Sections 271 and 272, we believe that Section 273 was meant to supersede the MFJ, and to replace it for both interstate and intrastate activities, to the extent that such a jurisdiction division makes sense in the context of manufacturing. Section 273 conditions entry into manufacturing on the BOC's obtaining Commission approval for interLATA entry under Section 272. This relationship between Sections 272 and 273 further suggests that they should both be read to have the same jurisdictional reach.

100. Moreover, we tentatively conclude that although Section 2(b) of the Communication Acts limits the Commission's authority over ''charges, classifications, practices, services, facilities, or regulation for or in connection with intrastate communications service,'' we tentatively conclude the manufacturing activities addressed by Section 273 are not within the scope of Section 2(b). Even if Section 2(b) applies with respect to BOC manufacturing under Section 273, we tentatively find that such manufacturing activities plainly cannot be segregated into interstate and intrastate portions. We invite comment on what role States might have in implementing Section 273's accounting safeguards provisions, assuming the correctness of these beliefs, and, in particular, whether in enacting Section 273, Congress intended to eliminate our ability to allow the States to depart from the federal cost allocation procedures in their regulation of ''charges * * * for or in connection with intrastate communications service[s].'' We ask the commenters also to address whether preemption in this area would be necessary to achieve the intent behind Section 273 or whether less intrusive measures would be sufficient.

3. Section 274—Electronic Publishing

101. Section 274 of the 1996 Act prescribes the terms under which a BOC may offer electronic publishing. Section 274(a) permits a BOC or its affiliate to provide electronic publishing over its or its affiliate's basic telephone service only through a ''separated affiliate'' or an ''electronic publishing joint venture.'' Section 274(i)(9) defines ''separated affiliate'' as ''a corporation under common ownership or control with a Bell operating company that does not own or control a Bell operating company and is not owned or controlled by a Bell operating company and that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliate's basic telephone service.'' Section 274(i)(8), in turn defines ''own'' as having ''a direct or indirect equity interest (or the equivalent thereof) of more than 10 percent of an entity, or the right to more than 10 percent of the gross revenues of an entity under a revenue sharing or royalty agreement.'' Section 274(i)(4) states that ''control'' has the meaning that it has in 17 CFR 240.12b–2, the regulations promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or any successor provision to such section.'' Section 274(i)(5) defines an ''electronic publishing joint venture'' as '' a joint venture owned by a Bell operating company or affiliate that engages in the provision of electronic publishing which is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service.''

102. Under Section 274(b), the ''separated affiliate'' or joint venture ''shall be operated independently from the [BOC].'' The ''separated affiliate'' or joint venture and the BOC with which it is affiliated must ''carry out transactions (i) in a manner consistent with such independence, (ii) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (iii) in a manner that is auditable in accordance with generally accepted auditing standards.'' The ''separated affiliate'' or joint venture must also ''value any assets that are transferred directly or indirectly from the [BOC] to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross-subsidies.''

103. Section 274(c)(2) discusses the joint activities permitted under Section 274. Section 274(c)(2)(A) provides that ''[a] Bell operating company may provide inbound telemarketing or referral services related to the provision of electronic publishing for a separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher, provided that if such services are provided to a separated affiliate, electronic publishing joint venture, or affiliate, such services shall be made available to all electronic publishers on request, on nondiscriminatory terms.'' Section 274(c)(2)(B) states that ''[a] Bell operating company may engage in nondiscriminatory teaming or business arrangements to engage in electronic publishing with any separated affiliate or with any other electronic publisher if (i) the Bell operating company only provides facilities, services, and basic telephone service information as authorized by [Section 274], and (ii) the Bell operating company does not own such teaming or business arrangement.'' Lastly, Section 274(c)(2)(C) permits ''[a] Bell operating company or affiliate [to] participat[e] on a nonexclusive basis in electronic publishing joint ventures with entities that are not a Bell operating company, affiliate, or separated affiliate to provide electronic publishing services, if the Bell operating company or affiliate has not more than a 50 percent direct or indirect equity interest (or the equivalent thereof) or the right to more than 50 percent of the gross revenues under a revenue sharing arrangement or royalty agreement in any electronic publishing joint venture.'' Under Section 274(c)(2)(C), ''[o]fficers and employees of a Bell operating company or affiliate participating in an electronic publishing joint venture may not have more than 50 percent of the voting control over the electronic publishing joint venture.'' ''In the case of joint ventures with small, local electronic publishers, the Commission for good cause shown may authorize the Bell operating company or affiliate to have a larger equity interest, revenue share, or voting control but not to exceed 80 percent.'' A BOC participating in an electronic publishing joint venture ''may provide promotion, marketing, sales, or advertising personnel and services to such joint venture.''

104. Section 274(d) requires a ''Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint * * * [to] provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation).'' Those rates cannot be ''higher on a per-unit basis than those charges for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.''

a. Comparison of Sections 274 and 272

105. The language of Section 274's structural and transactional

requirements differs from the structural and transactional requirements of Section 272. We invite comment on whether the distinction between a ''separated affiliate'' under Section 274 and a ''separate affiliate'' under Section 272 requires or permits different accounting treatment for affiliate transactions pursuant to Sections 272 and 274. Specifically, we seek comment whether we should apply our affiliate transactions rules, as we propose to modify them, to transactions between a BOC and its electronic publishing joint venture or ''separated affiliate.'' We seek comment on whether application of these rules would provide adequate accounting safeguards for the joint activities permitted under Section 274(c)(2). Because Section 274 allows a BOC to provide electronic publishing through either a ''separated affiliate'' or a joint venture, we also seek comment on whether we should distinguish, for Title II accounting purposes, between transactions involving a BOC and its ''separated affiliate'' and those involving a BOC and its electronic publishing joint venture.

b. Audit Requirements

106. Section 274(b)(8) requires electronic publishing ''separated affiliates'' or joint ventures and the BOC with which they are affiliated to have performed an annual compliance review ''conducted by an independent entity for the purpose of determining compliance during the preceding calendar year with any provision of [Section 274].'' The results of such a review must be maintained by the ''separated affiliate'' or the joint venture for a five-year period. We seek comment regarding how such compliance reviews should be conducted. We ask commenters to address specifically what matters the annual compliance review should encompass. We propose to require the independent entity to prepare and file with the Commission reports describing: (1) the scope of its compliance review, with a description of how the affiliate's or joint venture's books were examined and the extent of the examination; (2) the independent entity's conclusion whether examination of the books has revealed compliance or non-compliance with the affiliate transactions rules and any other non-discrimination requirements imposed by Commission rules; (3) any limitations imposed on the independent entity in the course of its review by the affiliate or joint venture or other circumstances that might affect the entity's opinion; and (4) statements by the independent entity as to whether the carrier's accounting and affiliate transactions methodologies conform to the Communications Act of 1934, as amended, and the Commission's rules and whether the carrier has accurately applied the methodologies. We seek comment on the necessity or desirability of this approach.

107. Section 274(b)(9) states a separated affiliate or joint venture and the BOC with which it is affiliated shall ''within 90 days of receiving a review described in [Section 274(b)(8)], file a report of any exceptions and corrective action with the Commission and allow any person to inspect and copy such review subject to reasonable safeguards to protect any proprietary information contained in such report from being used for purposes other than to enforce or pursue remedies under [Section 274].'' We seek comment regarding what ''reasonable safeguards'' may be necessary to protect proprietary information in the compliance review report ''from being used for purposes other than to enforce or pursue remedies under [Section 274].''

c. Section 274(f)'s Reporting Requirement

108. Section 274(f) requires ''[a]ny separated affiliate under [Section 274 to] file with the Commission annual reports in a form substantially equivalent to the Form 10–K required by regulations of the Securities and Exchange Commission.'' The Form 10–K contains a description of the company filing the report and its operations, financial statements with supporting financial data, and major legal and financial disclosures concerning the company. We tentatively conclude that, to minimize burdens on the filing companies, we should require the separated affiliate to file the Form 10–K with us as well as the Securities and Exchange Commission. We recognize, however, that not all separated affiliates providing electronic publishing services would be subject to the Security and Exchange Commission's Form 10–K requirement. With regard to these separated affiliates, we seek comment on what ''substantially equivalent to the Form 10–K'' means under Section 274(f).

d. Section 274 Transactional Requirements

109. Section 274(b)(1) requires the ''separated affiliate'' or joint venture to ''maintain books, records, and accounts and prepare separate financial statements.'' We invite comment on the steps we should take to implement this provision. We ask the commenters to address whether it is necessary for the Commission to adopt any additional accounting, bookkeeping, or record keeping requirements for these affiliates and joint ventures, and, if so, what those additional requirements should be.

110. Under Section 274(b), the ''separated affiliate'' or joint venture ''shall be operated independently from the [BOC].'' The ''separated affiliate'' or joint venture and the BOC with which it is affiliated must ''carry out transactions (i) in a manner consistent with such independence, (ii) pursuant to written contracts or tariffs that are filed with the Commission and made publicly available, and (iii) in a manner that is auditable in accordance with generally accepted auditing standards.'' We seek comment on the meaning of ''in a manner consistent with such independence.'' We also seek comment as to whether any regulations are necessary to implement Sections 274 (b)(3)(A) and (b)(3)(B).

111. We further seek comment on whether and, if so, how we should amend our rules to implement the requirement that transactions under Section 274(b)(3)(C) be ''auditable in accordance with generally accepted auditing standards.'' Generally accepted auditing standards refer to standards and guidelines promulgated by the American Institute of Certified Public Accountants that an independent auditor must follow when preparing for and conducting an audit of a company's financial statements. These standards generally require that the auditor review a company's internal controls and determine whether adequate documentation exists to verify that the company has recorded transactions on its books in a manner consistent with generally accepted accounting principles.

112. According to Section 274(b)(4), the ''separated affiliate'' or joint venture must also ''value any assets that are transferred directly or indirectly from the [BOC] to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the Commission or a State commission to prevent improper cross-subsidies.'' We have proposed in this Notice to conform our valuation methods under the affiliate transactions rules for the provision of services to those governing asset transfers. Regardless of how we resolve that issue, because Section 274 specifically addresses asset transfers between a BOC and its ''separated affiliate'' or joint venture, we seek comment on whether in this case we should distinguish between the asset transfers and the provision of services in

the context of electronic publishing affiliate transactions.

e. Scope of Commission's Authority

113. Although electronic publishing is specifically included within the definition of information service in Section 3(20), it is specifically exempted from the separate affiliate and nondiscrimination requirements of Section 272. Section 274,which applies only to BOCs, requires the use of a ''separated affiliate'' or ''electronic publishing joint venture'' in order for a BOC to engage in the provision of electronic publishing services via basic telephone services.

114. Section 274 imposes a number of safeguards on the provision by BOCs of electronic publishing through a separated affiliate or electronic publishing joint venture. Unlike Sections 260 and 275, however, Section 274 specifically refers to State commission jurisdiction regarding one of these safeguards. Section 274(b)(4) provides that a separated affiliate or joint venture and the BOC with which it is affiliated shall:

> value any assets that are transferred directly or indirectly from the Bell operating company to a separated affiliate or joint venture, and record any transactions by which such assets are transferred, in accordance with such regulations as may be prescribed by the *Commission or a State commission* to prevent improper cross subsidies.

This explicit reference to State commission regulations indicates that the requirements of this section apply to both interstate and intrastate electronic publishing services, and at the same time suggests that the Commission may not have exclusive jurisdiction over all aspects of intrastate services pursuant to Section 274. In light of this subsection, we seek comment on the extent of our authority, if any, under Section 274 over intrastate electronic publishing services.

115. Section 274(e) also provides that any person claiming a violation of this section may file a complaint with the Commission, or may bring suit pursuant to Section 207. It also provides that an application for a cease and desist order may be made to the Commission, or in any district court. No reference is made to complaints being filed with State commissions. We seek comment on the extent to which the Commission has jurisdiction under Section 274 over intrastate electronic publishing, particularly in light of the specific provisions of Sections 274(b)(4) and 274(e). We ask that commenters clearly identify whether specific subsections of Section 274 confer intrastate authority with respect to accounting matters addressed by Section 274 on the Commission.

116. To ensure a complete record, we also seek comment on whether, apart from any intrastate jurisdiction conferred by Section 274 itself, we have authority to preempt State regulation with respect to the accounting matters addressed by Section 260 pursuant to *Louisiana PSC* and, if so, whether we should exercise that authority. We tentatively conclude that if Section 274 does not apply to intrastate services and if we have authority to preempt pursuant to *Louisiana PSC,* we should refrain from exercising it in this area and instead retain our prior policy of not preempting States from using their own cost allocation procedures for intrastate purposes. We invite comment on this tentative conclusion. We also invite comment on what role states might have in implementing Section 274's accounting safeguards provisions, given the above analysis. We ask commenters to address whether in enacting Section 274, Congress intended to foreclose the states from departing from the federal cost allocation procedures for electronic publishing in their regulation of ''charges . . . for or in connection with intrastate communications service[s].'' We also ask the commenters also to address whether preemption in this area would be necessary to achieve the intent behind Section 274 or whether less intrusive measures would be sufficient.

f. Miscellaneous

117. Section 274(d) also requires a ''Bell operating company under common ownership or control with a separated affiliate or electronic publishing joint venture . . . [to] provide network access and interconnections for basic telephone service to electronic publishers at just and reasonable rates that are tariffed (so long as rates for such services are subject to regulation) and that are not higher on a per-unit basis than those charges for such services to any other electronic publisher or any separated affiliate engaged in electronic publishing.'' We tentatively conclude that we should apply our affiliate transactions rules, as we propose to modify them, to the provision of ''network access and interconnections for basic telephone service'' by a BOC under common ownership or control to ensure compliance with Section 274(d). We seek comment on this tentative conclusion.

4. Separated Operations Under Sections 260, 271, 275 and 276

118. While Sections 260, 271, 275 and 276 of the 1996 Act define categories of services that BOCs and, in some cases, incumbent local exchange carriers may not necessarily have to offer through a separate affiliate, a BOC or other incumbent local exchange carrier might, even if not required to do so, choose to perform these activities through an affiliate. We note that these sections do not explicitly impose regulatory requirements for transactions between a regulated company and its nonregulated affiliate. Sections 260, 275 and 276 bar the subsidization of the competitive businesses permitted under those sections by subscribers of either exchange access services. Section 260(a)(1) states that ''[a]ny local exchange carrier subject to the requirements of section 251(c) . . . shall not subsidize its telemessaging service directly or indirectly from its telephone exchange service or its exchange access.'' Section 275(b)(2) prohibits the subsidization of alarm monitoring services ''either directly or indirectly from telephone exchange service operations.'' Section 276(a)(1) bars any BOC that provides payphone service from ''subsidiz[ing] its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations.'' We believe that application of our affiliate transactions rules, as we propose to modify them, to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities that Sections 260, 275 and 276 of the 1996 Act might permit or require the carrier to offer through a separate affiliate would be consistent with these statutory mandates. We therefore seek comment on whether we should apply the affiliate transactions rules, with the proposed modifications, to transactions between an incumbent local exchange carrier and any of its affiliates engaged in activities that Sections 260, 275 and 276 might permit or require the carrier to offer through a separate affiliate. It is important to note, that we tentatively conclude in a companion item, *BOC In-Region NPRM,* that telemessaging, as defined in Section 260, is an information service. BOC provision of telemessaging on an interLATA basis would therefore be subject to the separate affiliate and other requirements of Section 272.

119. We also ask commenters to identify any interLATA telecommunications services, other than the interLATA telecommunications services that Section 272 requires BOCs

to provide through a separate affiliate, that the BOCs may choose to provide on a separated basis and for which we should develop appropriate affiliate transactions rules. In the case of such services, the 1996 Act does not explicitly impose or require specific regulatory safeguards to prevent subsidies. All of these interLATA telecommunications services would currently be considered regulated services for Title II accounting purposes, and, absent a Commission requirement to the contrary, the affiliates that offer these services would therefore classify them as regulated for Title II accounting purposes. Our existing affiliate transactions rules are solely designed to govern transactions between regulated carriers and their nonregulated affiliates. Because interLATA telecommunications services present a potential for improper subsidization, we tentatively conclude that we should apply our affiliate transactions rules to transactions between each BOC and any interLATA telecommunications services affiliate it establishes. We invite comment on this tentative conclusion. We also invite comment on whether and how we should adapt our affiliate transactions rules if applied to such transactions and, in particular, whether we should adopt special valuation methodologies for these transactions to recognize the regulated status of the affiliates on both sides of the transactions.

IV. Other Matters

A. Price Caps

1. General

120. Our existing Part 64 cost allocation rules were developed when all local exchange carriers were subject to cost-based, rate-of-return regulation. Today, we rely upon price cap, rather than rate-of-return, regulation to ensure that rates for the interstate services of the largest incumbent local exchange carriers, including the BOCs, are reasonable. Many States also have moved away from the traditional rate-of-return regulation by establishing temporary rate freezes or other price cap-like plans. Several State plans that were implemented before the Commission adopted price caps helped to guide us in developing the federal plan. Under the Commission's plan, price cap indices limit the prices that incumbent local exchange carriers may charge for their regulated interstate services. The indices are adjusted each year in accordance with a formula that accounts for changes in inflation and industry-wide changes in productivity.

121. The rules we adopt to prevent the subsidies prohibited by Sections 260 and 271 through 276 of the 1996 will shaped by our price cap regulations. A ''pure'' price cap system would permanently eliminate sharing, claims for exogenous treatment, and the need for the Commission to consider adjustments to productivity factors. Under pure price cap regulation, there would be few incentives to subsidize nonregulated services with revenues from regulated telecommunications services and the need for accounting safeguards to ensure against subsidies would be greatly diminished, unless, of course, there are other ways in which the carrier's entitlement to any revenues is dependent upon the costs the carrier classifies as regulated.

2. Exogenous Costs and Part 64

122. Under our price cap rules for incumbent local exchange carriers, most changes in a carrier's costs of providing regulated services are treated as ''endogenous,'' which means they do not result in adjustments to the carrier's price cap indices. Certain cost changes, however, triggered by administrative, legislative, or judicial action that are beyond the control of the carriers may result in adjustments to those indices. The Commission concluded that failing to recognize these cost changes by adjusting price cap indices would either unjustly punish or reward the carrier. Price cap carriers may claim adjustments to their indices based on costs that are beyond the carriers' control if they are not otherwise accounted for in the price cap formula. Such costs are defined as ''exogenous.'' Accordingly, the Commission has found that those types of cost changes should be treated ''exogenously'' to ensure that price cap regulation does not lead to unreasonably high or unreasonably low rates.

123. Our price cap rules for incumbent local exchange carriers specify that ''[s]ubject to further order of the Commission, those exogenous cost changes shall include cost changes caused by * * * [t]he reallocation of investment from regulated to nonregulated activities pursuant to [Section 64.901 of the Commission's rules].'' Under a strict reading of this rule, cost reallocations due to changes in the Part 64 cost allocation process would result in exogenous treatment only to the extent amounts are reallocated ''from regulated to nonregulated activities.'' We seek comment on this interpretation and whether all such reallocations to nonregulated activities that may result from the provision of telemessaging service should trigger an adjustment to lower price cap indices. We also seek comment on the potential exogenous treatment of new investment in network plant, some of which will be used for telemessaging service. As noted above, this investment may later require reallocation under part 64 if the proportion of regulated usage to nonregulatred usage changes over time.

3. Part 64 and Sharing

124. Under our price cap rules, incumbent local exchange carriers can select the productivity factor they will use to determine annual adjustments to their price cap indices. If they choose not to select the highest productivity factor permitted under our rules, they are required to ''share.'' Under sharing, incumbent local exchange carriers earning in excess of prescribed earnings levels must refund a portion of the excess earnings in subsequent rate periods by reducing their price cap indices. Those earnings are equal to the incumbent local exchange carrier's interstate revenues less the regulated interstate costs. Improper cost allocation can increase the incumbent local exchange carrier's regulated interstate costs and, therefore, can reduce the carrier's sharing obligations. We note, however, that in their most recent annual tariff filings all but four price cap local exchange carriers elected the highest interim productivity factor we had prescribed,which exempts them from sharing obligations for the 1995–96 access year. We seek comment on whether our eliminating sharing obligations permanently for price cap carriers would eliminate the need for Part 64 processes in our regulation of these companies. We also seek comment on how the relationship of our cost allocation rules to price cap local exchange carriers should influence the outcome of this proceeding.

B. Section 254(k)

125. Section 254(k) prohibits a telecommunications carrier from ''us[ing] services that are not competitive to subsidize services that are subject to competition.'' Section 254(k) further states that ''[t]he Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.'' We seek comment on whether our proposals related to Sections 260 and 271 through

276 of the 1996 Act are sufficient to implement Section 254(k)'s requirements that carriers not ''use services that are not competitive to subsidize services that are subject to competition'' and that the Commission, ''with respect to interstate services,'' establish rules necessary to ensure that regulated universal services ''bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.''

V. Procedural Issues

A. Ex Parte Presentations

126. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

B. Regulatory Flexibility Analysis

127. Section 603 of the Regulatory Flexibility Act, as amended, requires an initial regulatory flexibility analysis in notice and comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a significant number of small entities.'' The Regulatory Flexibility Act generally defines the term ''small entity'' as having the same meaning as ''small-business concern'' under the Small Business Act, which defines ''small-business concern'' as ''one which is independently owned and operated and which is not dominant in its field of operation * * *.'' This proceeding pertains to the Bell Operating Companies and other incumbent local exchange carriers which, because they are dominant in their field of operations, are by definition not small entities under the Regulatory Flexibility Act. We therefore certify, pursuant to Section 605(b) of the Regulatory Flexibility act, that the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Secretary shall send a copy of this NPRM, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this certification will also be published in the Federal Register notice.

C. Paperwork Reduction Act

128. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due on August 26, 1996 and reply comments are due on September 10, 1996; OMB comments are due September 30, 1996. 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.

129. Written comments by the public on the proposed or modified information collection are due on or before August 26, 1996 and reply comments on or before September 10, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed or modified information collections on or before [insert date 60 days after publication in the Federal Register.] In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

D. Comment Filing Procedures

130. Pursuant to applicable procedures set forth Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before August 26, 1996, and reply comments on or before September 10, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Ernestine Creech of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Interested parties can reach ITS by telephone at (202) 857–3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

131. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments and reply comments include a short and concise summary of the substantive arguments raised in the pleading. Comments, exclusive of appendices and summaries of substantive arguments, shall be no longer than sixty (60) pages and reply comments no longer than thirty (30) pages.

132. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Ernestine Creech of the Common Carrier Bureau's Accounting and Audits Division, 2000 L Street, N.W., Suite 257, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in a IBM compatible form using WordPerfect 5.1 for Windows software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

E. Additional Information

133. For further information concerning this proceeding, contact John V. Giusti or Mark B. Ehrlich, Accounting and Audits Division, Common Carrier Bureau at (202) 418–0850.

VI. Ordering Clauses

134. Accordingly, it is ordered that, pursuant to Sections 260 and 271–276 of the 1996 Act and Sections 1, 2, 4, 201–205, 215, 218, 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(a), 152(b), 154, 201–205, 215, 218, 220, 260 and 271–276, that Notice is hereby given of proposed amendments to Parts 32 and

64 of the Commission's rules, 47 CFR Part 32 and 64, as described in this Notice of proposed rulemaking.

135. It is further ordered that, the Secretary shall send a copy of this Notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* (1981).

List of Subjects

47 CFR Part 32

Transactions with affiliates, Regulated accounts.

47 CFR Part 64

Allocation of costs, transactions with affiliates, cost allocation manuals, Independent audits.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–19563 Filed 7–31–96; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 61, No. 149
Thursday, August 1, 1996

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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting; Board of Directors Meeting

TIME: 12:00 noon–3:00 p.m.
PLACE: ADF Headquarters.
DATE: Thursday, 15 August 1996.
STATUS: Open.

Agenda

12:00 noon—Lunch
12:30 p.m.—Chairman's Report
1:00 p.m.—President's Report
2:00 p.m.—Other
3:00 p.m.—Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,
President.

[FR Doc. 96–19712 Filed 7–30–96; 2:18 pm]
BILLING CODE 6116–01–P–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 26, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, PACC–IRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Rural Business—Cooperative Service

Title: 7 CFR 4279 Subpart B, Business and Industry Loan Program.

Summary: This information collection contains applications and related information for business and industry loans, guaranteed or insured by the Rural Business—Cooperative Service and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, insuring, holding, servicing or liquidating such loans.

Need and Use of the Information: The information is needed to make prudent credit decisions and to effectively monitor the lender's servicing activities and thus minimize losses under the program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 47,195.

- Rural Business—Cooperative Service

Title: 7 CFR 4287–B, Business and Industry Loan Program (Servicing).

Summary: This information collection contains applications and related information for business and industry loans, guaranteed or insured by the Rural Business—Cooperative Service and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, insuring, holding, servicing or liquidating such loans.

Need and Use of the Information: The information is needed to make prudent credit decisions and to effectively monitor the lender's servicing activities and thus minimize losses under the program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,240.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 22,569.

- Rural Business—Cooperative Service

Title: 7 CFR 4279 Subpart A, Business and Industry Guaranteed Loanmaking (General).

Summary: This information collection contains applications and related information for business and industry loans, guaranteed or insured by the Rural Business—Cooperative Service and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, insuring, holding, servicing or liquidating such loans.

Need and Use of the Information: The information is needed to make prudent credit decisions and to effectively monitor the lender's servicing activities and thus minimize losses under the program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 170.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 258.

- Rural Housing

Title: 7 CFR 1944–N, Housing Preservation Grant Program.

Summary: Information is complied initially by the applicant for consideration by the Rural Housing Service to determine eligibility for a grant to justify its selection of the applicant for funding. Additional information justifies and supports expenditures of grant funds.

Need and Use of the Information: The Rural Housing Service uses the information to determine eligibility for a grant and to determine if the grantee is complying with the grant agreement.

Description of Respondents: Not-for-profit institutions; Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 2,050.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 10,904.

- Food and Consumer Service

Title: Energy Assistance.

Summary: State agencies must submit certain documentation to FCS in order to obtain approval for an income and resource exclusion of state and local energy assistance.

Need and Use of the Information: The information is needed to determine if payments by State and local governments are excludable from household income as energy assistance under the Food Stamp Program enacted in 1980.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4.

- Food and Consumer Service

Title: Negative Quality Control Review Schedule—Status of Sample Selection and Completion—Statistical Summary of Sample Disposition.

Summary: As part of a Performance Reporting System, each state agency is required to provide a systematic means of determining the accuracy of household eligibility and measuring the extent to which households receive the food stamp allotment to which they are entitled.

Need and Use of the Information: The information serves as an objective measure of program operations at the state level and is essential to the determination of a state agency's entitlement to an increased federal share of its administrative costs or liability for sanctions.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Federal Government.

Number of Respondents: 35,132.

Frequency of Responses: Recordkeeping; Reporting: Monthly; Annually.

Total Burden Hours: 107,135.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–19552 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA

ACTION: Notice of availability and intent to grant exclusive license.

SUMMARY: Notice is hereby given that a Federally owned cultivar of centipede grass, ''TifBlair,'' is available for licensing and that the United States Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to the University of Georgia Research Foundation. Application for a Plant Variety Protection Certificate for this cultivar has been filed with the Plant Variety Protection Office in the United States Department of Agriculture.

DATES: Comments must be received on or before October 30, 1996.

ADDRESSES: Send comments to: USDA-ARS-Office of Technology Transfer, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 416, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the Office of Technology Transfer at the Beltsville address given above: telephone: 301/504–6905.

SUPPLEMENTARY INFORMATION: The Federal Government's plant variety protection rights to this variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so License this invention, for the University of Georgia Research Foundation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–19519 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Revised Land and Resource Management Plans for the National Forests in Alabama, Chattahoochee/Oconee National Forests, Cherokee National Forest, Jefferson National Forest, and the Sumter National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statements (NOI).

SUMMARY: Pursuant to 36 CFR 219.10(g), the Regional Forester for the Southern Region gives notice of the agency's intent to prepare Environmental Impact Statements (EIS) for the revisions of the Forest Land and Resource Management Plans (Forest Plans) for the above named National Forests. For the Jefferson National Forest, this notice revises their June 28, 1993 notice of intent to prepare an EIS to revise their Forest Plan. According to 36 CFR 219.10(g), forest plans are ordinarily revised on a 10–15 year cycle. Several amendments have been made to each plan since it originated. The existing forest plans were approved on the following dates:

National Forests in Alabama; March 10, 1986
Chattahoochee-Oconee National Forests; September 25, 1985
Cherokee National Forest; April 1, 1986
Jefferson National Forest; October 16, 1985
Sumter National Forest; August 2, 1985

The agency invites written comments within the scope of the analysis described below. In addition, the agency gives notice that an open and full environmental analysis and decision-making process will occur on the proposed actions so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: The agency expects to file the draft EISs (DEIS) with the Environmental Protection Agency and make them available for public comment in January of 1998. The Agency expects to file the final EISs in December of 1998. Comments concerning the scope of the analysis should be received by December 2, 1996.

ADDRESSES: Submit written comments to Forest Supervisors of the appropriate Forest at the following addresses:

National Forests in Alabama, 946 Chestnut, Montgomery, AL 36107–3010
Chattahoochee-Oconee National Forests, 508 Oak Street, NW, Gainesville, GA 30501
Cherokee National Forest, 2800 N. Ocoee Street (P.O. Box 2010), Cleveland, TN 37320–2010
Jefferson National Forest, 5162 Valleypointe Parkway, Roanoke, VA 24019
Sumter National Forest, 4931 Broad River Road, Columbia, SC 29210–4021

FOR FURTHER INFORMATION CONTACT:

National Forests in Alabama: Planning Team Leader—Rick Morgan—phone: (334) 832–4470
Chattahoochee-Oconee National Forests: Planning Staff Officer—Caren Brisco—phone: (770) 536–0541
Cherokee National Forest: Planning Staff Officer—Keith Sandifer—phone: (615) 476–9700
Jefferson National Forest: Planning Staff Officer—Kenneth Landgraf—phone: (540) 265–5100
Sumter National Forest: Planning Team Leader—Tony White—phone: (803) 561–4000

RESPONSIBLE OFFICIAL: The Regional Forester for the Southern Region located at 1720 Peachtree Road, NW, Atlanta, Georgia 30367, is the responsible official.

Affected Counties

This Notice of Intent affects the following Counties:

National Forests in Alabama: Bibb, Calhoun, Cherokee, Chilton, Clay, Cleburne, Dallas, Hale, Perry, Talladega, Tuscaloosa, Franklin, Lawrence, Winston, Covington, Escambia, and Macon; Alabama.

Chattahoochee-Oconee National Forests: Banks, Catoosa, Chattooga, Dawson, Fannin, Floyd, Gilmer, Gordon, Habersham, Lumpkin, Murray, Rabun, Stephens, Towns, Union, Walker, White, Whitfield, Green, Jasper, Jones, Monroe, Morgan, Oconee, Oglethorpe, and Putnam: Georgia.

Cherokee National Forest: Polk, McMinn, Monroe, Greene, Cocke, Unicoi, Sullivan, Washington, Johnson, and Carter; Tennessee.

Jefferson National Forest: Letcher and Pike; Kentucky—Monroe; West Virginia—Bedford, Bland, Botetourt, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Montgomery, Pulaski, Roanoke, Rockbridge, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; Virginia.

Sumter National Forest: Abbeville, Chester, Edgefield, Fairfield, Greenwood, Laurens, McCormick, Newberry, Oconee, Saluda, and Union; South Carolina.

SUPPLEMENTARY INFORMATION:

A. Background Information

1. An Ecological Approach to Planning

The general model for an ecological approach to land management planning includes four iterative steps: assessment decision, implementations, and monitoring. The first step involves assessment of the forest situation that characterize the biophysical and social ecosystem components at appropriate temporal and spatial scales. These provide a comprehensive description and evaluation of ecosystem structures, processes, functions, and social and economic conditions that are critical to understanding the present conditions and projecting future trends. From this information, decisions can be made to establish ''desired future conditions'', set goals and objectives, make resource allocations, establish standards and guidelines, determine monitoring requirements, and establish priorities. Following the implementation of those decisions, monitoring and evaluation will determine if changes should be made in the implementation, if there is a need for new decision, or if there is a need to re-assess the situation.

In the Southern Appalachian area, a Southern Appalachian Assessment has been completed. Also completed is the Chattooga Ecosystem Management Demonstration Project (Chattooga Project) which was an effort to consolidate and integrate ecological information for the Chattooga River Watershed which is located at the junction of North Carolina, South Carolina, and Georgia; and includes three National Forests.

Information from these analyses that cross State boundaries and involve multiple National Forests, along with the individual National Forests efforts to update their ''analysis of the management situation'' (AMS), are now being used by these National Forests to determine what decisions in their Land and Resource Management Plans (LRMP) should be re-analyzed or changed in revising their LRMPs.

2. The Southern Appalachian Assessment

Recently the U.S. Forest Service has participated in the preparation of the Southern Appalachian Assessment (SAA). The Assessment culminated in a final Summary Report and four Technical Reports that are now available to the public. It was prepared by the U.S. Forest Service (the Southern Region of the National Forest System and the Southern Forest Experiment Station) in cooperation with the other Federal and state agencies that are members of SAMBA (Southern Appalachian Man and the Biosphere Cooperative). The Assessment included National Forest system lands and private lands in the George Washington/Jefferson, Nantahala-Pisgah, Cherokee, and Chattahoochee National Forests; and parts of the Sumter and Talladega National Forests. Also involved were the National Park Service lands in the Great Smoky Mountains National Park, Shenandoah National Park, and the Blue Ridge Parkway.

The Assessment facilitates an interagency ecological approach to management in the Southern Appalachian area by collecting and analyzing broad-scale biological, physical, social and economic data to facilitate better, more ecologically based forest level resource analysis and management decisions. The Assessment was organized around four ''themes''—(1) Terrestrial (including Forest Health, and Plant and Animal Resources); (2) Aquatic Resources; (3) Atmospheric Resources and (4) Social/Cultural/Economic Resources (which includes the Human Dimension; Roadless Areas and Wilderness; Recreation; and Timber Supply and Demand).

As the National Forests in the Southern Appalachians were conducting their forest level efforts to describe their ''Analysis of the Management Situation'' (AMS), they were also providing information for the larger-scale analysis in the Southern Appalachian Assessment.

The Assessment supports the revision of the LRMPs by describing how the lands, resources, people and management of the National Forests interrelate within the larger context of the Southern Appalachian area. The SAA, however, is not a ''decision document'' and it did not involve the National Environmental Policy Act (NEPA) process. As broad-scale issues were identified at the sub-regional level (Southern Appalachian Mountain area) in the Assessment, the individual National Forest's role in resolving these broad-scale issues becomes a part of the ''need for change'' at the Forest level.

Public involvement has been important throughout both of these processes. Continuing public involvement leading to formulation of alternatives for the forest plan revision analysis efforts will now be conducted through the ''scoping'' period that follows the issuance of this Notice of Intent.

3. The Beginning of the Forest Plan Revision Efforts for the National Forests in Alabama, the Chattahoochee-Oconee, the Cherokee, and the Sumter National Forests

The National Forests in the Southern Appalachian area have applied several efforts to begin their revisions. The main objective thus far has been to do the analysis leading to a proposal to change forest management direction. A key part of that analysis, for significant portions of each of the forests, has been the SAA.

On February 24, 1995, a Notice was placed in the Federal Register (Vol. 60, No. 37) that identified the relationships between the SAA and the Forest Plan revisions of the National Forests in Alabama, Chattahoochee-Oconee National Forests, Cherokee National Forest, and the Sumter National Forest.

A February 24, 1995 Notice in the Federal Register (Vol. 60, No. 37) identified; (1) that the National Forests in Alabama, Chattahoochee-Oconee National Forests, Cherokee National Forest, and the Sumter National Forest were each preparing an Analysis of the Management Situation (AMS), and (2) the relationship between the Southern Appalachian Assessment and those efforts. Since then, preparation of a Draft AMSs has included updating resource inventories, defining the current situation, estimating supply capabilities and resource demands, evaluating the results of monitoring, determining the ''Need for Change'' (36 CFR 219.12(e)(5)), review of previous public comments, and public meetings or other outreach. These Draft AMSs are

now available for public review. Together with the results of the SAA, they are the present basis of the issues/Forest Plan decisions that will be examined during the plan revision process. Additional topics will be developed as needed to respond to public comments received on this Notice of Intent during the 120-day public comment period.

In the past, a ''Notice of Intent to Prepare an Environmental Impact Statement'' was issued prior to the development of the AMS. However, for these Forest Plan revisions, an effort was made to first define the current situation and estimate an ''initial need for change'' in a Draft AMS prior to issuing a Notice of Intent to Prepare an Environmental Impact Statement. We hope this will lead to improved ''scoping'', which will help the public provide more concise and specific comments. This should make it possible to develop more responsive alternatives to be analyzed in the Environmental Impact Statements accompanying the individual Revised Forest Plans.

4. Status of the Jefferson, George Washington, and Nantahala-Pisgah National Forests

The Jefferson National Forest previously issued a Notice of Intent to Prepare an Environmental Impact Statement for its Revised LRMP on June 28, 1993. This NOI revises that earlier notice, and provides notification that the planning process on the Jefferson National Forest will now coincide with the planning process and timelines for the other National Forests in the Southern Appalachians.

Although the George Washington National Forest and the Nantahala-Pisgah National Forests were part of the Southern Appalachian Assessment, they are not beginning plan revisions at this time. The George Washington National Forest completed its Final Revised Forest Plan on January 21, 1993, and the Nantahala-Pasgah National Forests completed a significant amendment, Amendment 5 to their Land and Resource Management Plan on March 18, 1994. However, as information from the Southern Appalachian Assessment and the other National Forest planning process are being analyzed, a need to change these plans may be identified to ensure consistency between the National Forests in the Southern Appalachians.

5. The Role of Forest Plans

National Forest System resource allocation and management decisions are made in two stages. The first stage is the forest plan, which allocates lands and resources to various uses or conditions by establishing management areas and management prescriptions for the land and resources within the plan area. The second stage is approval of project decisions.

Forest plans do not compel the agency to undertake any site-specific projects; rather, they establish overall goals and objectives (or desired resource conditions) that the individual National Forest will strive to meet. Forest plans also establish limitations on what actions may be authorized, and what conditions must be met, during project decision-making.

The primary decisions made in a forest plan include:

(1) Establishment of the forest-wide multiple-use goals and objectives (36 CFR 219.11(b)).

(2) Establishment of forest-wide management requirements (36 CFR 219.13 to 219.27).

(3) Establishment of multiple-use prescriptions and associated standards and guidelines for each management area (36 CFR 219.11(c)).

(4) Determination of land that is suitable for the production of timber (16 U.S.C. 1604(k) and 36 CFR 219.14).

(5) Establishment of allowable sale quantity for timber within a time frame specified in the plan (36 CFR 219.16).

(6) Establishment of monitoring and evaluation requirements (36 CFR 219.11(d)).

(7) Recommendation of roadless areas as potential wilderness areas (36 CFR 219.17).

(8) Where applicable, designate those lands administratively available for oil and gas leasing; and when appropriate, authorize the Bureau of Land Management to offer specific lands for leasing. (36 CFR 228.102 (d) and (e))

The authorization of site-specific activities within a plan area occurs through project decision-making, the second stage of forest planning. Project decision-making must comply with NEPA procedures and must include a determination that the project is consistent with the forest plan.

6. The Role of Scoping in Revising the Southern Appalachian Land and Resource Management Plans

This NOI includes a description of the preliminary Issues and ''Proposed Actions'' for the five National Forests in the Southern Appalachians that are revising their LRMPs. The ''Proposed Actions'' are actions within one or more of the plan decisions identified in the purpose and need.

Scoping to receive public comments on the preliminary issues and proposed actions will begin following the publication of this NOI. The public comments received during this comment period will be used to further refine the preliminary issues that should be addressed, the forest plan decisions that need to be analyzed (the ''proposed actions''/''need for change''), and to help define the range of alternatives that will be developed.

For more information on how the public can become involved during the Scoping period, see Section 6 of this NOI.

B. Purpose and Need for Action

This Notice applies to each of the 5 Forest Plans. The need to revise these plans is driven by the changing conditions identified in the SAA and in individual Forest assessments as well as the changing public values associated with these National Forests. These conditions and values make it appropriate that all of these Southern Appalachian Forest Plan Revisions be done simultaneously.

The purpose for revision rests in the requirements of the National Forest System Land and Resource Management Planning required by the National Forest Management Act and its implementing regulations contained in Chapter 36 of the Code of Federal Regulations, section 219. According to 36 CFR 219.10(g), forest plans are ordinarily revised on a 10–15 year cycle. These five forests are all completing these cycles.

C. Preliminary Issues

1. Introduction

Early in the process there are several sources of what are called ''preliminary issues''. These are issues stated so that the public, when learning about the environmental analysis, can focus their needs and preferences on the forest plan decisions. One source of information leading to issue development has been the Southern Appalachian Assessment. The Assessment has produced some findings and preliminary issues of broad public interest which have implications that must be considered. This consideration may involve one or more or all Forests, depending on the issue. In addition, the Forests, working with their publics, have identified preliminary issues specific to their Forest.

2. Findings of the Southern Appalachian Assessment

The Southern Appalachian Assessment (SAA) provides key information concerning those portions of the National Forests that are within the SAA area that will be used in plan

revisions. The SAA teams compiled existing region-wide information on resource status and trends, conditions, and impacts of various land management activities and resource uses that apply to portions of each of the five forests that are revising Forest Plans. Several preliminary issues are listed that are associated with the findings of the Assessment. The findings include:

Aquatic Resources

Water Quality and Quantity

The Southern Appalachian ecosystem is widely recognized as one of the most diverse in the temperate region. The headwaters of nine major rivers lie within the boundaries of the Southern Appalachians, making it a source of drinking water for much of the Southeast. In addition, as a general finding, there has been a reduction in water use in the Southern Appalachian area.

Preliminary issues or management opportunities:

—Protection, maintenance and improvement of water resources within the SAA area in coordination with multiple use management.
—Coordination of water quality (and quantity on some forests) needs with adjacent forests, land owners and other agencies with water management responsibilities.
—Insuring water quality and quantity needs for channel maintenance and biotic resources.

Stream Condition and Habitat Quality

The SAA aquatics report identified streams, water bodies, and riparian habitat that were degraded to varied extent.

Preliminary issue or management opportunity:

—Restoration of degraded streams, habitat and riparian loss.

Protection of Aquatic Species

Diversity of aquatic species across the Southern Appalachian area is high, with a rich fauna of fish, molluscs, crayfish, and aquatic insects. Approximately 39 percent of the SAA area is in the range for wild trout, consisting of 33,088 miles of potential wild trout streams. The three trout species within the SAA area are vulnerable to stream acidification, which is increasing, particularly in the northern part of the Assessment area and higher-elevation streams. The heritage program files indicate there are 190 species that are endangered, threatened, or of special concern within the SAA area. Mussel populations may experience additional declines over the next 30 years in the Tennessee River basin.

Preliminary issues or management opportunities:

—Protection for these aquatic species and maintenance of the water quality supporting them.
—Management for trout in suitable habitat areas.

Human Induced Impacts on Aquatic Resources

Although human activities that impair aquatic habitat have decreased, population growth and concomitant land development have the potential to increase pressure on aquatic resources. More than 80 percent of the river miles in most watersheds representing 75 percent of the river miles in the SAA area are rated as fully supporting their uses (fully supporting is a measure which states that 90 percent of the time the stream meets water quality criteria). Aquatic Resources within the SAA are affected by acid mine waste, National Pollutant Discharge Elimination System (NPDES) facilities, sedimentation (in certain localized situations), urban and rural development, and industrial facilities.

Preliminary issue or management opportunity:

—How the National Forests will manage human induced impacts to the aquatic resources.

Atmospheric Resource

Air Pollution

The SAA found that visibility in the Southern Appalachians has decreased since the 1940's as haziness has intensified due mainly to sulfates in the air. Improvements are expected; however, once the Clean Air Act Amendments of 1990 are implemented. It is expected that there will be a 50 percent reduction in SO_2 emissions nationwide. Acid deposition is also a problem in the region and headwater streams are most susceptible to acidification (see also, aquatic resource discussion). In addition, nitrogen oxide emissions are expected to increase, contributing to visibility impairment, acid deposition, and ground level ozone, which can cause growth reduction and physiological stress in trees. The greatest potential for growth loss due to the ozone concentration is in the northern and southern ends of the Southern Appalachian area and wherever sensitive hardwoods are located at higher elevations. Particulate matter in the air is a concern, while apparently not one that is increasing currently, especially while land managers are anticipating accelerating the use of prescribed fire for numerous purposes.

Preliminary issue or management opportunity:

—Adverse effects of air pollution on visibility, nitrogen oxide emissions, and acid deposition.
—Management's increasing use of prescribed fire and particulate matter in the atmosphere.

Social, Cultural, and Economics

Effects on Local Communities

The combined natural resource sector (wood-products manufacturing, forestry, mining, and tourism) provides nearly 10 percent of SAA area employment, 7 percent of wages, and 12 percent of the industry output. The number of employees (including seasonal or part-time) associated with tourism has doubled between 1977 and 1991.

Over 30,000 jobs are directly related to recreation facilities on Federal land. The counties with the greatest number of these jobs are located near the area's two National Parks and the large concentration of National Forests in western North Carolina. Counties with white-water rivers, such as the Chattooga, Nantahala, and Ocoee have seen increases in recreation-related employment.

Preliminary issue or management opportunity:

—Resource allocation and its effect on local economies, including stabilizing and helping the economies and social structure of local communities.

Societal Changes in the Southern Appalachian Area

Changes in the social pattern has effects on the management of natural resources in the region. Changing relative values between commodity and non-commodity uses of forest resources and Southern Appalachian ecosystems are cited by the SAA. While not consistent across the Southern Appalachian area, the population has increased 27.8 percent in the region between 1970 and 1990. For natural resource management, however, the increase in the area's population is less significant than the economic development that accompanied the increase and the attitudes and cultural attachment that exists here.

Preliminary issue or management opportunity.

—The mix of natural resource goods and services from National Forest System lands that is sensitive to evolving demographics, attitudes, and needs.

Wood products from public lands

The Federal share of timberland in individual counties ranges up to 69 percent. The decisions made by Federal agencies, therefore, can strongly influence local timber production and the economy in certain parts of the region.

The National Forests hold a large share of high-grade oak sawtimber. Since this is the kind of timber that is in shortest supply and greatest demand, National Forest timber sales can affect the markets for high-quality oak. The terrain in National Forests is more rugged and there are fewer roads, making the timber on these lands more expensive to harvest.

Preliminary issue or management opportunity:

—The role of the National Forests in supplying forest products, and the association of these products to specific Desired Future Conditions on individual Forests.

Recreation settings and use

Only around 8 percent of the Southern Appalachians, including the Great Smokey Mountain National Park, can be classified as having ''remote'' recreation settings. About two-thirds of these settings are on public lands. About 18 percent of the Southern Appalachians are highly developed settings with 2 percent in urban, 4 percent in suburban, and 12 percent in transition of emerging development settings. About 45 prevent of the area is rural, and about 24 percent is natural-appearing forests.

Congestion in recreation use tends to occur on the shores of lakes and streams, because the settings are in high demand. Due to limited sources of supply, settings and facilities for mountain biking, horseback riding, off-highway vehicle driving, and white-water rafting often are congested.

A high proportion of recreation use on Federally owned land occurs at the outer edges of the Appalachian chain. As population centers grow, use patterns will creep toward the center of the mountain ranges.

Wilderness and roadless areas account for 4 percent of all land in the Southern Appalachians. As population increases and urban areas expand, there is concern that the wilderness resource will be affected by overuse.

Preliminary issues or management opportunities:

—The mix of recreation settings on National Forest system lands and the management of each.

—Increasing urbanization of lands adjacent to the National Forests and the effects on Forest Service management.

—Access to public lands.

Roadless and Wilderness

A total of 752,654 acres of inventoried roadless areas were identified in the SAA National Forests ranging in size from 2,035 acres to 27,293 acres and representing 61 percent of all roadless areas within the SAA area.

Preliminary issue or management opportunity:

—Management of these and other areas to meet wilderness, recreational, and other resource demands.

Terrestrial—Plant and Animal Resources

Current conditions and trends of forest landscapes

The Southern Appalachian Assessment described current conditions and trends of forested landscapes. These were applied to 9 forest classes and 4 successional classes. The Assessment found that currently National Forests contain 17 percent of the region's forests, 7 percent of the early successional habitats and 42 percent of the late successional habitats.

Currently around 3 percent of National Forest system land is in early successional habitat. This is 4 percent below mid 1970s National Forest levels. There were 10 species associates identified for this habitat. Forty-five percent of the National Forest System lands in the SAA area are in late successional habitat. This represents an increase of 34 percent since 1970.

Preliminary issue or management opportunity:

—Desired future conditions for the mix of these habitat conditions must be determined, as well as the larger landscape conditions (forested as opposed to agriculture).

Old Growth forests

Around 1.1 million acres of possible old-growth forest were identified in an initial inventory of SAA National Forests. Patches identified vary from 1 acre to 13,000 acres in size and across a full range of vegetative communities.

Preliminary issue or management opportunity:

—Management of these areas, as well as other types of areas, and their spacial allocation to meet the biological, social, and cultural objectives associated with this condition.

Rare Communities

The Assessment found that 31 rare communities are key to the conservation of 65 percent of the Federally listed T&E species and 66 percent of the species with viability concern (globally ranked G1, G2, G3) in the Southern Appalachians. Examples of these rare communities are high elevation grassy and heath balds, mountain longleaf pine woodlands, granitic domes, high elevation rocky summits, and sphagnum and shrub bogs.

Preliminary issue or management opportunity:

—Management of rare communities.

Federally Listed Threatened and Endangered (T&E) and Viability Concern Species

The Assessment looks at 51 Federally listed T&E species (11 habitat associations) and the needs of 366 viability concern species (17 habitat associations). While not all of these species and habitats occur on National Forest system lands, the importance of this listing lies in the fact that the Forest Service manages habitat that is often key to preservation and recovery of many species.

Preliminary issue or management opportunity:

—Recovery and management of Federally listed T&E species and Forest Service sensitive species.

Game Species

The SAA provided population trends, current status, and some future forecasts for 10 major game species.

Preliminary issue or management opportunity:

—The role of the National Forests in sustaining habitats to support the major game species identified in the SAA for public hunting and viewing.

Black Bear Habitat

The SAA determined that National Forests contain around 4 million acres of potentially suitable black bear habitat, of which about 77 percent has relatively low road density (less than 1.6 miles of road length per square mile) and 51 percent has less than 0.8 miles per square mile. Habitat parameters include open road density, early successional habitats, late successional habitats capable of producing denning sites, and oak mast. Black bear have experienced a moderate range expansion in some parts of the Southern Appalachians over the last 25 years.

Preliminary issue or management opportunity:

—The Desired Future Condition of black bear habitat in the Southern Appalachian National Forests.

Area-Sensitive Forest Bird Habitats

A total of 15.8 million acres of mid- to late-successional deciduous forest

habitat is contained in the SAA area. Approximately 66 percent of these acres are suitable forest interior habitat. Around 8.2 million acres are in forest tracts greater than 5,000 acres in size. These larger tracts have the potential to support all 16 area sensitive landbirds (primarily neotropical migrants). Habitat fragmentation and edge effect were considered. It is estimated that National Forests are currently providing 39 percent of the acreage in these large forest tracts in the SAA area. Taking into account the conditions of the larger landscape, the SAA estimated that around 90 percent of the habitat on National Forest system land is forest interior.

Preliminary issue or management opportunity:

—Management of area-sensitive forest bird habitats.

High Elevation Forest Habitats

About 32 percent of the high elevation montane spruce-fir/northern hardwood habitats in the Southern Appalachian area are found on National Forest system land and 23 plant and animal species are included in this habitat association. The Southern Appalachian National Forests are facing possible declines, caused by balsam woolly adelgid and air pollution, in this rare high elevation forest community.

Preliminary issue or management opportunity:

—Possible declines in high elevation forest habitats due to balsam wooly adelgid.

Riparian Habitat

The SAA looked at seeps, springs, and streamside areas. A total 1.5 million acres of these types are in forested cover. Of this, the SAA estimated that National Forests contain around 219,000 acres of forested riparian habitat. The future quality of these habitats is uncertain and may decline due to threats from hemlock wooly adelgid, an exotic insect.

Preliminary issue or management opportunity:

—The Desired Future Conditions for both terrestrial and aquatic riparian habitats, including the specific management of threats to these habitats from hemlock wooly adelgid.

Forest Vegetation Health

The SAA addresses changes in forest vegetation or soil productivity in response to human-caused disturbances or natural processes, potential effects of presence and absence of fire, how the health of the forest ecosystem is being affected by air pollution and native and exotic pests, and how current and past management affecting the health and integrity of forest vegetation in the Southern Appalachians.

The SAA predicts that the European gypsy moth will spread as far south as northern Georgia by the year 2020. Other identified threats to forest ecosystem health include dogwood anthracnose, butternut canker, beech bark disease, southern pine beetle, and asiatic gypsy moth.

Preliminary issue or management opportunity:

—The role of fire in sustaining forest ecosystems.

—Management of identified threats to forest health.

3. Preliminary Issues That May Be Common to the Five Forests

Preliminary issues from the SAA and Forests have been identified that apply to one or more or all of the National Forests in this Notice. Some of these include aquatic resources, forest health, inventoried roadless areas, scenery management, T&E and Sensitive species, terrestrial resources, and wood products. Public response to scoping will be used to develop the actual issues and the forest or forests to which they apply.

4. Preliminary Issues on Individual National Forests

The Southern Appalachian area National Forests have also developed some preliminary issues locally. Since each National Forest must develop its own issues, the following lists will appear in somewhat different formats. The forests will further refine these, incorporate the findings of the SAA and finally, determine the significant issues to carry forward into the NEPA analysis. The following issues are identified by topics and more specific information is available at the individual Forest by contacting the planners listed at the beginning of this Notice.

National Forests in Alabama

Trails and associated facilities and their management
Wilderness area management
Special area designations
Forest cover types, old growth and rotations
Management tools to use in achieving desired future conditions
Mix of goods and services from the Forest
Longleaf restoration for RCW recovery
Habitat types
Fire management
Road density
Land acquisition and exchange

Chattahoochee-Oconee National Forests

Timber management
Road access management and resource protection
Trails
Water quality and increasing forest use
Biological diversity and timber harvesting
Biological diversity, visual quality and hardwood harvesting
Pesticide use and biological and social effects
Balance between rural and urban public demands

Cherokee National Forest

Public road planning, development and management
Timber resource management
Outdoor recreation settings
Trail network management
Forest uses and water quality
Management for biological diversity
Forest health and ecosystems and timber harvesting
Management and scenic attractiveness—landscape patterns
Mix of management intensities across the landscape

Jefferson National Forest

Biological Diversity
  Old growth
  Habitat fragmentation
  Riparian areas/Aquatic ecosystems
  Air quality
  Special interest Areas
  Proposed, endangered, threatened, and sensitive species
  Wildlife and fish management
  Tree health
Wilderness and rivers
  Wilderness
  Wild and Scenic Rivers
Mount Rogers National Recreation Area
Recreation opportunities
  Recreation opportunities
Management practices
  Timber management
  Fire management
  Grazing
Timber production
Transportation system
  Access
  Off-highway vehicles
Minerals, oil and gas
  Oil and gas
  Minerals
Special Uses
Social and economic concerns
  Below cost timber sales
  Subsurface property rights
  Local community economies

Sumter National Forest

Biodiversity
  Variety of communities
  Old growth
  Proposed threatened, endangered, and

sensitive species
Rare and underrepresented plan communities
Riparian areas
Landscape patterns
Role of fires in forest ecosystems
Mineral development
Protection of water and other resource values
Recreation
Mix and emphasis of opportunities
Chattooga Wild and Scenic River values
Timber Management
Lands available for timber management and
Desired timber products

D. Proposed Actions

Each National Forest did an initial analysis of its management situation focusing on changes that have taken place during the current ten-year planning period. During the past decade Forest Plan Amendments, annual monitoring, five year reviews of implementing Forest Plans, and working with the public have provided the Forests with valuable information about changes that are needed in existing Forest Plans. This initiates the determination of the need to establish or change management direction as required under the NFMA regulations at 36 CFR 219.12.(e)(5). From this information each Forest compiled a preliminary list of subject areas, or revision items, which will be used to guide their plan revision. The proposed action is to develop or revalidate goals, objectives, standards and guidelines, and prescriptions.

1. Proposals that are Common to all Five Forests

When revising a forest plan, roadless areas of public lands within and adjacent to the forest shall be evaluated and considered for recommendation for wilderness areas 36 CFR 219.17(a). At least every 10 years each forest must review the designation of lands not suited for timber production (36 CFR 219.14(d). For these forests, the ten-year review is being done in this revision process so all alternatives will evaluate existing suitability designations in light of current conditions. The following list includes additional items that are shared by all of the five National Forests listed in this Notice.

—Establish desired future condition(s), goals, and objectives for resource management.
—Establish, where appropriate, consistent management direction across adjacent National Forest boundaries.
—Establish new management areas;
—Determine suitability of lands for resource management;
—Determine timber allowable sale quantity (i.e., Timber ASQ);
—Analyze and recommend rivers and streams for eligibility and/or suitability for inclusion in the National Wild and Scenic Rivers System;
—Replace the current Visual Management System with the new Scenery Management System and establish new visual objectives;
—Adjust the plan monitoring and evaluation requirements to address the elements of the revised plans;
—Identify any needed new special or unique areas;
—Address management needs for all forms of forest access; and
—Address the question of oil and gas leasing on the National Forest system lands.

2. Proposed Actions That are Unique to the Individual Forests

In addition to those items listed in A., above, there are a number of other proposed actions that the individual forests have developed. The following lists are not complete; however, at this point they contain many of the more specific actions that the forests have determined to be important and that should be incorporated in the respective plan revisions. Additional actions will be added and some may be deleted as a result of scoping.

National Forests in Alabama

—Identify, maintain and/or restore the LLP/wiregrass community on the Conecuh National Forest where it is appropriate to do so;
—Address the 3–5 year burning rotation on the sandy soil types found primarily on the Tuskegee and Conecuh Districts and conflicts with ecosystem relationships;
—Incorporate into the Forest Plan, recovery plans for 9 T&E species;
—Incorporate conservation agreements for sensitive species—as needed;
—Incorporate the new RCW EIS into plan revision;
—Examine land ownership adjustment needs across the Forest;
—Incorporate new management direction for over-used areas, especially wilderness areas and trails, and encourage use of alternate trailheads and areas associated with the Sipsey Wilderness;
—Upgrade existing developed recreation sites to meet current standards, and provide greater accessibility for people with disabilities;
—Provide guidance for increased interpretative services and maps for wilderness areas and trails; and
—Provide management direction for regeneration and conversion to address changing conditions/ emphases.
—Establish management guidelines for the fisheries program to consider where and when to install habitat structures and to fertilize lakes.
—Establish guidelines for addressing noxious weeds and exotic species, especially where they impact sensitive species or rare communities.
—Determine if grazing should be continued on the Conecuh National Forest, and if it should be woods grazing or pasture grazing.

Chattahoochee-Oconee National Forests

—Establish Forest Plan goals and objectives, and management direction for special forest products (medicinal herbs, craft material, etc.);
—Incorporate management requirements of the Regional Forester's June 1995, decision and the U.S. Fish and Wildlife Service Recovery Plan (when completed) for the red cockaded woodpecker which apply to the Oconee National Forest.
—General forest lands need different management emphasis across the forests. Currently, the general forest area (MA–16) has the same goals and objectives for all lands. This could be true for other MA's as well.
—Clarify the use of timber harvesting to meet Forest Plan goals and objectives. The revised Forest Plan should incorporate standards and guidelines to assist the Districts in determining those conditions and situations that would enable a sale to be classified as forest stewardship (timber purposes, personal use, wildlife habitat, etc.)
—Add timber quality as a objective of timber management.
—Adjust acres on which planned timber harvesting could occur due to reductions for resource protection such as: riparian areas, cultural resources, Proposed, Endangered, and Sensitive Species (PETS), and any other factors which would effectively reduce the suitable land base.
—Establish standards, guidelines, and monitoring requirements for single-tree selection.
—Update direction for timber harvest in riparian areas.
—Establish recreational carrying capacities.
—Establish management direction for the Chattahoochee National Forest to restore appropriate streams to native brook trout.

—Establish management direction for rare communities identified in the Southern Appalachian Assessment.
—Establish coordinated desired future conditions, goals, objectives and direction for the Chattooga River Watershed between the Sumter, the Chattahoochee-Oconee, and National Forests in North Carolina.
—Revise other management direction to incorporate new information about: range management; transportation systems; development of monitoring and recovery plans for PETS; redesign shade protection guidelines for aquatic habitat needs and establish direction for woody debris and aquatic habitat management; review and update air quality direction to clarify needs for Wilderness, non-Wilderness, problem areas, and relationship to State permitting process.

Cherokee National Forest

—Identify special or unique areas, and establish goals for management of such areas;
—Establish guidelines for production of special forest products, and minerals.
—Establish, where appropriate, consistent management direction across adjacent National Forest boundaries.
—Revise guidelines that respond to threats from pests and noxious species.
—Clarify the use of timber harvesting and other planned human-caused disturbances to meet Forest Plan goals and objectives.

Jefferson National Forest

—Develop goals, objectives, standards and guidelines for salvage of dead and dying timber where deemed appropriate. Determine and clearly describe priorities for salvage;
—Consider the effects of long-term fire suppression on ecosystems and the role of prescribed fire as a management tool;
—Address the use and effects of livestock grazing to achieve multiple-use goals and objectives;
—Add direction to provide for new Federal regulations and the 1987 Onshore Oil and Gas Leasing Reform Act;
—Consider subsurface ownership when evaluating land allocations; and
—Provide minimum management requirements and direction for special uses (e.g., linear rights-of-way, military exercises, electronic sites and commercial services.)

Sumter National Forest

—Coordinate with the Chattahoochee-Oconee National Forest and the National Forests in North Carolina to establish goals, objectives, and desired future conditions for the Chattooga River Watershed.
—Link land ownership adjustment priorities with desired future condition, goals, and objective establishment.
—Establish, where appropriate, consistent management direction across adjacent National Forest boundaries.
—Consider insect and disease in development and evaluation of alternatives and effects.
—Consider historical Forest budget trends in alternative analysis.
—Incorporate carrying capacity (biological, physical, and social) of the Chattooga River in establishment of desired future condition, goals, and objectives for the Wild and Scenic River.
—Consider ecological classification in developing management areas and desired future conditions.
—Develop desired future conditions that integrate coordinated resource goals and objectives that will facilitate the development of multiple-use projects.
—Revise the monitoring and evaluation direction to include effectiveness monitoring for Forest Plan goals, objectives, and desired future conditions.
—Develop two separate indicator lists (mountains and piedmont) to incorporate new PETS species that are readily monitored, forest interior species, area-sensitive species, and species that may indicate effects at a landscape scale.

E. Preliminary Alternatives

The actual alternatives presented in each forest's draft EIS will portray a full range of responses to issues which are significant on the individual Forest. The five separate draft EIS's will examine the effects of implementing strategies to achieve different desired future conditions for each forest and will develop possible management objectives and opportunities that would move the forests toward desired conditions. A preferred alternative will be identified in each draft EIS.

The range of alternatives presented in each DEIS will include one that continues current management direction and others will also be provided to address the range of issues developed in the scoping process.

F. Involving the Public

The objective in this process for public involvement is to create an atmosphere of openess where all members of the public feel free to share information with the Forest Service and its employees on a regular basis. All parts of this process will be structured to maintain this openess.

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the draft environmental impact statements. The range of alternatives to be considered in the EIS will be based on the identification of significant public issues, management concerns, resource management opportunities, and plan decisions specific to each of the National Forests. Public participation will be solicited by notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice, and public scoping meetings will be conducted on each National Forest.

Public participation will be sought throughout the plan revision process and will be especially important at several points along the way. The first opportunity to comment will be during the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying additional potential issues (other than those previously described), (2) from these, identifying significant issues or those which have been covered by prior environmental review, (4) exploring additional alternatives, and (5) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

As part of the first step in scoping, a series of public opportunities are scheduled to explain the public role in the planning process and provide an opportunity for public input. Formats, times and places will vary. These are determined by the individual forest to meet the needs of their publics. For more specific information on times and locations, please contact the Forests. These meetings will occur as follows:

National Forest in Alabama

Proposed Locations and Dates:
Double Springs, Alabama; August 6, 1996
Brent, Alabama; August 8, 1996
Heflin, Alabama; August 13, 1996
Talladega, Alabama; August 14, 1996
Andalusia, Alabama; August 20, 1996
Tuskegee, Alabama; August 22, 1996

Chattahoochee-Oconee National Forests

Proposed Locations and Dates:
Madison, Georgia; September 5, 1996
Gainesville, Georgia; September 7,

1996
Dalton, Georgia; September 10, 1996

Cherokee National Forest

Proposed Locations and Dates:
Elizabethton, Tennessee; October 7, 1996
Greeneville, Tennessee; October 8, 1996
Alcoa, Tennessee; October 10, 1996
Tellico Plains; October 15, 1996
Ducktown, Tennessee; October 16, 1996
Cleveland, Tennessee; October 17, 1996
Nashville, Tennessee; October 21, 1996

Jefferson National Forest

Proposed Location and Date:
Mt. Rogers NRA, Jefferson National Forest, Virginia; August 17, 1996

Sumter National Forest

Proposed Locations and Dates:
Columbia, South Carolina; August 22, 1996
Edgefield, South Carolina; August 26, 1996
Newberry, South Carolina; September 10, 1996
Walhalla, South Carolina; September 21, 1996

G. Release and Review of the EISs

Each Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by January, 1998. At that time, the EPA will publish a notice of availability of each DEIS (one for each Forest's DEIS) in the Federal Register. The comment period on each DEIS will be 3 months from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC. 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F.Supp.1334, 1338 (E.D.Wis.1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 3 month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in each FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on each DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment periods end on each DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing each FEIS. The FEISs are scheduled to be completed in December, 1998. The responsible official will consider the comments, responses, environmental consequences discussed in each FEIS, and applicable laws, regulations, and policies in making a decision regarding these revisions. The responsible official will document the decision and reasons for the decision in a Record of Decision for each Forest Plan. Each decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official for each of the Forest Plans is the Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: July 25, 1996.

Gloria Manning,

Deputy Regional Forester, NRT.

[FR Doc. 96–19429 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Kankakee (IL) Area and the States of California and Washington

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Kankakee Grain Inspection, Inc. (Kankakee), the California Department of Food and Agriculture (California) and the Washington Department of Agriculture (Washington) will end January 31, 1997, according to the Act, and GIPSA is asking persons interested in providing official services in the Kankakee, California, and Washington areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before September 2, 1996.

ADDRESSES: Applications must be submitted to USDA, GIPSA, FGIS, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated: Kankakee main office located in Bourbonnais, Illinois; California main office located in Sacramento, California; and Washington, main office located in Olympia, Washington, under the Act on February 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Kankakee, California, and Washington end on January 31, 1997.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the State of Illinois, is assigned to Kankakee:

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 west to the western Peoria County line; and

Bounded on the West by the western Peoria and Stark County lines; the northern Stark County line east to State Route 88; State Route 88 north to the Bureau County line.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, the entire State of California, is assigned to California, except those export port locations within the State which are serviced by GIPSA, and except the geographic area assigned to the Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, the entire State of Washington, except those export port locations within the State, is assigned to Washington.

Interested persons, including Kankakee, California, and Washington, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning February 1, 1997, and ending January 31, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 24, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 96–19385 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–EN–F

Designation for the Central Iowa (IA) and Montana Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Central Iowa Grain Inspection Service, Inc. (Central Iowa), and the Montana Department of Agriculture (Montana) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: September 1, 1996.

ADDRESSES: USDA, GIPSA, FGIS, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 1996, Federal Register (61 FR 8025), GIPSA asked persons interested in providing official services in the geographic areas assigned to Central Iowa and Montana to submit an application for designation. Applications were due by March 30, 1996. Central Iowa and Montana, the only applicants, each applied for designation to provide official inspection services in the entire areas currently assigned to them.

Since Central Iowa and Montana were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Central Iowa and Montana are able to provide official services in the geographic areas for which they applied. Effective September 1, 1996, and ending August 31, 1999, Central Iowa and Montana are designated to provide official services in the geographic areas specified in the March 1, 1996, Federal Register.

Interested persons may obtain official services by contacting Central Iowa at 515–266–1101 and Montana 406–452–9561.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 24, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 96–19379 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Missouri Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA request comments on the applicants for designation to provide official services in the geographic area currently assigned to the Missouri Department of Agriculture.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by September 2, 1996.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, FGIS, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 30, 1996, Federal Register (61 FR 27045), GIPSA asked persons interested in providing official services in the geographic area assigned to Missouri to submit an application for designation. There were two applicants: Missouri applied for designation to provide official inspection services in

the State of Missouri and Grain Belt Inspection Service (Grain Belt), an organization to be formed by Larry and Peggy Aschermann that plans to establish its main office in Jefferson City, Missouri, applied for designation to provide official inspection services in all or any part of the State of Missouri.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the Federal Register, and GIPSA will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 24, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 96–19378 Filed 7–31–96; 8:45 am]

BILLING CODE 3410–EN–F

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

July 25, 1996.

Notice is hereby given that U.S. Arctic Research Commission will hold its 44th Meeting in the Anchorage Museum in Anchorage, AK on the afternoon of August 19 and the morning of August 20, 1996 and in the Grand Aleutian Hotel in Dutch Harbor, AK on August 21. Anchorage agenda items include:

(1) Call to order and approval of the Agenda.
(2) Approval of the minutes of the 42nd Meeting.
(3) Reports of Congressional Liaisons.
(4) Agency Reports.

The business meeting will be followed by an Executive Session.

On Wednesday, August 21, in Dutch Harbor the Commission will hear reports on:

(1) The Bering Sea Impact Study (BESIS) which is planned to study the impact of Global Change on the Bering Sea region.
(2) NOAA's Eastern Bering Sea Carrying Capacity Study which is studying the ability of the Bering Sea to support life, particularly fish.
(3) The National Academy of Sciences recently published report entitled, ''The Bering Sea Ecosystem.''

A general discussion of the Bering Sea and its research needs will follow.

On the afternoon of the 21st the Commission will visit National Park Service activities in the Dutch Harbor region.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

CONTACT PERSON FOR MORE INFORMATION: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 96–19736 Filed 7–30–96; 2:59 pm]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PBR membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1996 rating year.

FOR FURTHER INFORMATION CONTACT: Ms. Gerri Mason Hall, Personnel Division, U.S. Commission on Civil Rights, 624 Ninth Street, NW, Washington, DC 20425, (202) 376–8356.

Members

—Paula Lettice, Director, Office of Budget and Program Execution, Office of Budget and Planning, U.S. Department of State;
—Annabelle Lockhart, Director, Civil Rights Center, U.S. Department of Labor;
—Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights; and
—Donald Tendick, Deputy Executive Director, Commodity Futures Trading Commission.

Dated: July 29, 1996.

Stephanie Y. Moore,

Acting Solicitor.

[FR Doc. 96–19595 Filed 7–31–96; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1966 Panel Wave 3.

Form Number(s): Automated instrument and SIPP–16303 reminder card.

Agency Approval Number: 0607–0813.

Type of Request: Revision of a currently approved collection.

Burden: 117,800 hours.

Number of Respondents: 77,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Bureau of the Census conducts the Survey of Income and Program Participation (SIPP) to collect information from a sample of households concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture. The SIPP is a longitudinal survey, in that households in the ''panel'' are interviewed at regular intervals or ''waves'' over a number of years. The survey is molded around a central ''core'' of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of a panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is periodically supplemented with additional questions or ''topical modules'' designed to answer specific needs. This request is for clearance of Wave 3 of the 1996 Panel. The Core questions have already been cleared. Topical modules for waves 4 through 13 will be cleared later. The topical modules for Wave 3 are: (1) assets and liabilities, (2) medical expenses and work disability, (3) real estate, shelter

costs, dependent care and vehicles, and (4) the poverty module. Also, additional topical module items will be asked at the end of the core instrument concerning earnings and employment, general income amounts, stocks and mutual fund shares, rental income, mortgages, royalties, and other financial investments. Wave 3 interviews will be conducted from December 1996 through March 1997.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 29, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19601 Filed 7–31–96; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–489–807]

Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars (Rebar) From Turkey

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

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Cameron Werker, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3874, respectively.

POSTPONEMENT OF FINAL DETERMINATION: On March 28, 1996, the Department initiated an antidumping duty investigation of imports of rebar from Turkey. The notice of initiation stated that we would issue our preliminary determination on or before August 15, 1996 (61 FR 15039, April 4, 1996). On May 30, 1996, June 4, 1996, and July 1, 1996, we received questionnaire responses from the five Turkish respondents producing merchandise subject to this investigation.

On July 22, 1996, petitioners made a timely request pursuant to 19 CFR 353.15(C) of the Department's interim regulations (60 FR 25130, May 11, 1995) for a 50-day postponement of the preliminary determination, until October 4, 1996, pursuant to Section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Petitioners requested a postponement so that the Department would have the opportunity to analyze and use respondents' cost of production data for the preliminary determination.

For the reasons identified by petitioners, we are postponing the preliminary determination under Section 733(c)(1)(A) of the Act.

We will make our preliminary determination no later than October 4, 1996.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: July 26, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–19603 Filed 7–31–96; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Scope Rulings

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

ACTION: Notice of Scope Rulings and Anticircumvention Inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between April 1, 1996, and June 30, 1996. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the Federal Register a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between April 1, 1996, and June 30, 1996, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in October 1996 a notice of scope rulings and anticircumvention inquiries completed between July 1, 1996, and September 30, 1996, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. Scope Rulings Completed Between April 1, 1996 and June 30, 1996

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Morris Friedman & Co.—A candle in a galvanized steel bucket and a candle in a glass container are within the scope of the order. 6/24/96.

Country: Japan

A–588–504 *Cellular Mobile Telephones and Subassemblies*
Matsushita Communication Industrial Corporation and related entities—Panasonic's portable cellular telephone (PCT) hands-free device, model number EB–HF7002, is outside the scope of the order. 6/26/96.

A–588–702 *Stainless Steel Butt-Weld Pipe Fittings*
Benkan America, Inc. and Benkan UCT Corporation—superclean fittings (SCFs) manufactured by Benkan UCT are outside the scope of the order. 05/14/96.

A–588–804 *Antifriction Bearings*
Dana Corporation—Automotive component known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order. 6/26/96.

II. Anticircumvention Rulings Completed Between April 1, 1996 and June 30, 1996

None.

III. Scope Inquiries Terminated Between April 1, 1996 and June 30, 1996

Country: Turkey

A–489–501 *Welded Carbon Steel Standard Pipe and Tube Products*

Allied Tube and Conduit Corporation, Wheatland Tube Company, Laclede Steel Company, Sharon Tube Company, and Sawhill Tubular Division of Armco, Inc.—Clarification to determine whether pipe which meets the order's physical specifications, when intended for or actually used as standard pipe, is included within the scope of the order. Scope inquiry terminated on 06/04/96.

IV. Anticircumvention Inquiries Terminated Between April 1, 1996 and June 30, 1996

None.

V. Pending Scope Clarification Requests as of June 30, 1996

Country: Brazil

A–351–817, C–351–818 *Certain Cut-to-Length Carbon Steel Plate*
Wirth Limited—Clarification to determine whether profile slabs produced by Companhia Siderurgica de Tubarao and imported by Wirth Limited are within the scope of the order.

Country: United Kingdom

A–412–612 *Crankshafts*
Clarkes Crankshaft Ltd.—Clarification to determine whether crankshafts produced utilizing an open die forging process are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*
Enkotec Company, Inc.—Clarification to determine whether the ''main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, outside the scope of the order.

Country: Singapore

A–559–801 *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof*
Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or bearing assembly) is within the scope of the order.

Country: People's Republic of China

A–570–504 *Petroleum Wax Candles*
Mervyn's—Clarification to determine whether a candle, article no. 20172, in the shape of a cube is within the scope of the order.
Enesco Corporation—Clarification to determine whether 10 styles of candles imported from the PRC are within the scope of the order.
Midwest of Cannon Falls—Clarification to determine whether 7 styles of candles imported from the PRC are within the scope of the order.
Cost Plus, Inc.—Clarification to determine whether taper and pillar candles imported as beeswax candles are within the scope of the order.
Kendal King Graphics—Clarification to determine whether certain Christmas ''candle tins'' are within the scope of the order.
Sun-It Corporation—Clarification to determine whether tapers manufactured with citronella oil are within the scope of the order.

A–570–808 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.
Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–820 *Certain Compact Ductile Iron Waterworks (CDIW) Fittings and Glands*
Star Pipe Products, Inc.—Clarification to determine whether ''retainer glands'' are within the scope of the order.

A–570–822 *Helical Spring Lock Washers (HSLWs)*
Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs which are imported to the U.S. in an uncut, coil form are within the scope of the order.

Country: Taiwan

A–583–508 *Porcelain-on-Steel Cooking Ware*
Cost Plus, Inc.—Clarification to determine whether 10 piece porcelain-on-steel fondue sets are within the scope of the order.

A–583–810 *Chrome-Plated Lug Nuts*
Consolidated International Automotive, Inc.—Clarification to determine whether certain nickel-plated lug nuts are within the scope of the order.

A–583–820 *Helical Spring Lock Washers (HSLWs)*
Shakeproof Industrial Products Division of Illinois Tool Works (SIP)—Clarification to determine whether HSLWs imported into the U.S. in an uncut, coil form are within the scope of the order.

Country: Japan

A–588–055 *Acrylic Sheet from Japan*
Sumitomo Chemical Co., Ltd.—Clarification to determine whether Sumielec, an acrylic based antistatic material, is within the scope of the order.

A–588–056 *Melamine*
Taiyo America, Inc.—Clarification to determine whether melamine with special physical characteristics (100% of the particles are smaller than 10 microns) are within the scope of the order.

A–588–802 *3½″ Microdisks*
TDK Inc., TDK Electronics Co.—Clarification to determine whether certain web roll media are within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*
Rockwell International Corporation—Clarification to determine whether an automotive component known as a cushion suspension unit (or cushion assembly unit or center bearing assembly) is within the scope of the order.

A–588–807 *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured*
Honda Power Equipment Manufacturing Inc. (HPE)—Clarification to determine whether certain belts HPE imports from Japan for use in manufacturing lawn tractors and riding lawn mowers are within the scope of the order.
American Honda Motor Co., Inc. (AHM)—clarification to determine whether certain v-belts imported from Japan by AHM are within the scope of the order.

A–588–809 *Small Business Telephone Systems and Subassemblies and Parts Thereof*
Iwatsu America, Inc. and Iwatsu Electric Co.—Clarification to determine whether certain dual use subassemblies (central processing units and read-only-memory units) are within the scope of the order.

A–588–810 *Mechanical Transfer Presses*
Komatsu Ltd.—Clarification to determine whether certain mechanical transfer press parts exported from Japan are within the scope of the order.

A–588–815 *Gray Portland Cement and Clinker*
Surecrete, Inc.—Clarification to determine whether New Super Fine Cement manufactured by Nittetsu Cement Co., Ltd., is within the

scope of the order.

A–588–824 *Corrosion Resistant Carbon Steel Flat Products*

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

Country: Russia

A–821–803 *Titanium Sponge*

Waldron Pacific, Inc.—Clarification to determine whether titanium tablets produced by electrolytic reduction are within the scope of the order.

A–821–805 *Pure Magnesium*

ESM II, Inc.—Clarification to determine whether unwrought magnesium containing less than 99.8% magnesium by weight, in ingots, plates, blocks, and other shapes, is within the scope of the order.

VI. Pending Anticircumvention Inquiries as of June 30, 1996

Country: Korea

A–580–008 *Color Television Receivers from Korea*

International Brotherhood of Electrical Workers, the International Union of Electronic Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (the Unions)—Anticircumvention inquiry to determine whether Samsung Electronics Co., L.G. Electronics Inc., and Daewoo Electronics Co., are circumventing the order by shipping Korean-origin color picture tubes, printed circuit boards, color television kits, chassis, and other materials, parts and components to plants operated by related parties in Mexico where the parts are then assembled in CTVs and shipped to the U.S. Additionally, an anticircumvention inquiry to determine whether Samsung by shipping Korean-origin color picture tubes and other CTV parts to a related party in Thailand for assembly into complete CTVs prior to exportation to the U.S.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: July 25, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–19602 Filed 7–31–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserve

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of ocean and Coastal Resource management (OCRM) announces its intent to evaluate the performance of the Maine, New Hampshire and Rhode Island Coastal Zone Management Programs and the Sapelo Island (GA) National Estuarine Research Reserve Program.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program implementation and reserve management. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or reserve Management Plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State,and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Maine Coastal Zone Management Program site visit will be from September 9–13, 1996. A public meeting will be on Thursday, September 12, 1996, at 4:00 P.M., at the Portland City Court House, Portland City, Maine.

The New Hampshire Coastal Zone Management Program site visit will be from September 9–13, 1996. A public meeting will be on Wednesday, September 11, 1996, at 7:00 P.M., at the Urban Forestry Center, 45 Elwyn Road, Portsmouth, New Hampshire.

The Rhode Island Coastal Zone Management Program site visit will be from September 9–13, 1996. A public meeting will be on Wednesday, September 11, 1996, at 7:00 P.M., at the Department of Administration Building, 1 Capitol Hill, Conference Room A, 2nd Floor, Providence, Rhode Island.

The Sapelo Island, Georgia, National Estuarine Research Reserve, site visit will be from September 23–27, 1996. A public meeting will be held on Wednesday, September 25, 1996, at 7:00 P.M. at the Sapelo Island Visitor's Center, Dock Landing Road, Meridian, Georgia.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and suppplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the Federal Register announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: July 25, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–19586 Filed 7–31–96; 8:45am]

BILLING CODE 3510–08–M

[Docket No. 960412111–6202–02; I.D. 040596B]

RIN 0648–ZA20

West Coast Salmon Fisheries; Northwest Emergency Assistance Plan (NEAP)

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

ACTION: Final notice.

SUMMARY: This notice announces the final eligibility criteria for the NEAP Habitat Restoration Jobs Program and the Data Collection Jobs Program, and responds to comments submitted on the notice of proposed program, which was published in the Federal Register on April 23, 1996. The notice of proposed program effected certain administrative changes to the NEAP, and requested comments on proposed NEAP revisions for the Habitat Restoration Program and the Data Collection Jobs Program, as well as the License Buy Out Program.

NMFS has established final funding allocations for the Habitat Restoration Jobs ($4.7 million), Data Collection Jobs ($2.8 million) and License Buy Out ($5.2 million) Programs. Final decision on the administration of the License Buy Out Program has been deferred until the public is provided with notice and an opportunity to comment on new bidding options. The decision to defer the program is based on comments received from the public and consultations with state and local officials.

EFFECTIVE DATE: July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Stephen Freese, (206) 526-6113.

SUPPLEMENTARY INFORMATION: On August 2, 1995, the Secretary of Commerce (Secretary) declared that a fishery resource disaster continued in 1995 for the salmon fisheries of the Pacific States of California (north of San Francisco), Oregon, and Washington, excluding Puget Sound. Under the authority of the Interjurisdictional Fisheries Act (IFA) of 1986 (16 U.S.C. 4107(d)), as amended, an additional $12.7 million in Federal financial assistance was made available for affected salmon fishermen.

In the notice and request for comments (61 FR 17879; April 23, 1996), NMFS announced its decision to continue the basic structure of the Habitat Restoration Jobs Program and the Data Collection Jobs Program, as first established on October 11, 1994 (59 FR 51419), with subsequent amendments published on January 31, 1995 (60 FR 3908), and June 22, 1995 (60 FR 32507), but to change certain aspects of the NEAP and propose revisions to certain limitations, terms, and conditions of the programs. The April 23, 1996, notice effected administrative changes relating to the calculation of uninsured loss, and specifically requested comments on the following issues: (1) A decrease in the minimum commercial fishing income earning requirement from $5,000 to $2,500; (2) allowing participants in the License Buy Out Program to participate in the Jobs Programs; (3) exclusion of applicants from the License Buy Out Program who offer licenses purchased in 1995; and (4) four bidding options for the License Buy Out Program.

The notice also indicated that Congress may amend the IFA to provide NMFS with more program flexibility. The President signed these amendments into law on April 26, 1996. These amendments superseded the administrative change made in the April 23, 1996, Federal Register notice relating to uninsured losses, and had the following impacts on the NEAP: (1) Financial assistance is now no longer limited to $100,000 over the life of the NEAP; (2) no calculation of uninsured loss is necessary; and (3) participation in the program is now limited to applicants with less than $2,000,000 in net revenues annually from commercial fishing, as opposed to the previous cap of $2,000,000 in gross revenues annually.

Pursuant to the comments received on the notice, and after consultations with state and local officials, NMFS has decided to defer a final decision on the License Buy Out Program. The comments indicated a lack of consensus on any proposed bidding option, and the Governor of Washington, citing this lack of consensus, supported a delay of the program for consideration of new options. These new bidding options are being developed, and the public will be provided with notice and an opportunity to comment before a final decision is made.

Comments and Responses

In response to the notice of proposed program, NMFS received 25 comment letters from 10 fishing associations, 14 fishermen, 1 tribe, and 2 government entities. This notice will only respond to comments on the Habitat Restoration Program and Data Collection Jobs Program. NMFS will respond to the comments on the License Buy Out Program in the notice that will present the new bidding options.

Comment 1: One county government requested inclusion of processors and support industries in NEAP. Similarly, one association requested programs to address an estimated loss of 1,000 full-time jobs in the shoreside sector since 1988.

Response 1: The IFA limits assistance ''to persons engaged in commercial fisheries* * *. '' NMFS interprets this to mean vessel owners, operators, or crew directly involved in commercial fishing. Consequently, losses suffered by the processing and support industries are not eligible for assistance.

Comment 2: One association requested that habitat restoration be focused in areas that are managed for wild stocks, which is one of the most limiting factors in mixed stock fisheries management. The association also commented that project selection should not focus only on areas with the most fishermen per capita, because fishermen who fish in coastal fisheries but reside in the North Puget Sound or the metropolitan Puget Sound areas also have suffered from the fisheries disaster.

Response 2: The selection of habitat projects focuses primarily on the optimum benefit to the salmon resource. However, since the projects are designed to employ eligible fishermen, projects must be located within commuting distance of these fishermen. In addition, local, state and Federal officials participate in the project selection process, and their decisions reflect current policies concerning wild and hatchery stocks. Protection of habitat associated with hatchery stocks is important and usually benefits wild stocks.

Comment 3: One local government organization and one fisherman requested that NEAP be expanded to include Puget Sound, claiming that Puget Sound charterboat operators experienced severe Sound closures during the years 1994 through 1996 and, unlike coastal charters, cannot easily switch to bottomfishing or whale watching.

Response 3: The IFA provides assistance to fishermen affected by declared fisheries disasters. The Secretary's disaster declaration limited the disaster to the fisheries of the Pacific States of California (north of San Francisco), Oregon, and Washington, excluding Puget Sound. Puget Sound was excluded because the factors underlying the natural resource disaster were not deemed to have extended to Puget Sound. Consequently, Puget Sound fishermen are not eligible for assistance.

Comment 4: One local government organization urged that disaster assistance be provided to the Northwest fishing industry now to enable it to survive projected losses in 1996.

Response 4: Since the Secretary has not yet declared a fisheries disaster for 1996, Commerce cannot provide assistance for projected losses in 1996.

Comment 5: One association recommended adjusting the maximum income limitations for differences in the cost of living in different geographical areas.

Response 5: Adjusting the maximum income limitations for differences in the cost of living in different geographical areas would be unduly burdensome and may delay the program. NMFS believes that the current income limitations accurately capture the fishermen most affected by the disasters.

Comment 6: To improve the data collected in the Data Collection Jobs Program, one association requested that the requirements for qualified platforms and fishermen be lenient enough so that contractors could hire the best type of vessel for the planned research.

Response 6: Under the 1995 eligibility requirements, an adequate number of appropriate vessels were found to complete the desired research. If the subcontractor requires a larger vessel in order to further NEAP conservation and sustainable management efforts and complete essential research, and NEAP eligible fishermen with such vessels are not available, the subcontractor may utilize non-eligible fishermen's vessels. However, subcontractors must contact and receive prior approval from NMFS and the Pacific States Marine Fisheries Commission before hiring such vessels. The subcontractor must also be able to demonstrate the need for a larger vessel and document the search for eligible owner-operators. Fishermen who perform the data collection research activities on the vessel (not the owner or operator) must still satisfy the Data Collection Jobs Program eligibility criteria.

Comment 7: Three comments were received concerning the amounts of money allocated for the existing programs. One association wanted an increased allocation for California fishermen, while another association sought more money for the Washington License Buy Out Program. One fisherman wanted more money for buying charter boat permits under the Washington License Buy Out Program, and three associations requested that the California Habitat Restoration Jobs Program funds be split equally among the four counties.

Response 7: The NEAP allocation of funds among states and among programs was based on consultations with state governors. The allocation of funds among gear groups in the License Buy Out Program was based on the recommendations of the Governor of Washington. The allocation of Habitat Restoration Jobs Program funds within a state is a decision made by the U.S. Department of Agriculture (USDA) in consultation with the states and the resource conservation districts.

Comment 8: Three associations and one resource conservation district requested that $100,000 be transferred from the California Habitat Restoration Jobs Program to the California Data Collection Jobs Program. This request is for at-sea data collection projects in support of Pacific Fisheries Management Council salmon management. These projects will assess fishing techniques that avoid stressed stocks while allowing access to healthy stocks.

Response 8: NMFS, USDA, and the Office of the Governor of California concur in this recommendation, and $100,000 of funds has been transferred.

Comment 9: One fisherman stated that there was a mistake in referring to a specific Federal Register notice and requested that NMFS publish a correction and extend the public comment period appropriately.

Response 9: On page 17880 of the Federal Register notice (61 FR 17879, April 23, 1996), the following statement was made: ''Furthermore, as a result of the Secretary's expansion of the disaster and NMFS's efforts to improve the program, the term ''loss'', as defined in the NEAP published on January 31, 1994 (60 FR 5908)* * *.'' The correct publication date of the Federal Register notice being referred to is January 31, 1995. The volume and page number of the citation are correct and, therefore, this does not necessitate an extension of the comment period.

Final Eligibility Criteria for the Habitat Restoration Jobs Program and Data Collection Jobs Program

Pursuant to the IFA amendments and the comments received on the notice of proposed program, NMFS has established the following eligibility criteria:

1. The applicant must be a commercial fisherman as defined in the October 11, 1994, program notice (59 FR 51419).

2. The applicant must have earned at least $2,500 in commercial fishing income in any of the base years 1986 through 1991.

3. Applicants must show documentation that they participated in the commercial fisheries during the disaster period of 1991 to 1995.

4. The applicant must have earned less than $2,000,000 in net revenues annually from commercial fishing.

5. If single, the applicant's 1993, 1994, or 1995 gross income (income from fishing and non-fishing activities) must have been less than $25,000. If married, the applicant's 1993, 1994, or 1995 gross income must have been less than $50,000.

Since NMFS received no comments to the contrary, fishermen who have participated or will participate in the Washington State License Buy Out Program are now eligible for assistance through employment in the Habitat Restoration Program or the Data Collection Jobs Program if they meet the other program eligibility requirements.

All inquiries on how to apply to the Habitat Restoration Jobs Program should be directed to the following people:

Washington—Steve Meyer, Executive Director, Washington State Conservation Commission, P.O. Box 47721, Olympia, WA

98504–7721; (360) 407–6201.

Oregon—Tom Schafer, Outreach Coordinator, Salmon Disaster Outreach Program, 13408 Alsea Highway, Tidewater, OR 97390; (541) 528–7451.

California—Curtis Ihle, Overall Program Coordinator, Humboldt County Resource Conservation District, P.O. Box 397, Fields Landing, CA 95537–0397; (707) 444–9708.

For employment in the Data Collection Jobs Program, please contact Russell Porter, Field Program Administrator, Pacific States Marine Fisheries Commission, 45 SE. 82nd Drive, Suite 100, Gladstone, OR 97027–2522; (503) 650–5400.

Catalogue of Federal Domestic Assistance

The Program is listed in the ''Catalogue of Federal Domestic Assistance'' under No. 11.452, Unallied Industry Projects.

Classification

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

NMFS finds good cause for making this announcement effective the date of filing with the Office of the Federal Register. Delaying the effective date is impracticable and contrary to the public interest because it would delay financial assistance to those affected by a fishery resource disaster. Furthermore, the data collection is tied to the migratory patterns of the stock, and must be completed soon if it is to be of use for the next fishing season.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this

announcement would not have a significant economic impact on a substantial number of small entities because only a small portion of the industry will be directly affected.

This program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB), under OMB control number 0648-0288. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Authority: Public Law 99-659 (16 U.S.C. 4107 *et seq.*); Public Law 102-396.

Dated: July 25, 1996.

Charles Karnella,

Acting Director, Office of Management and Information, National Marine Fisheries Service.

[FR Doc. 96–19539 Filed 7–26–96; 4:57 pm]

BILLING CODE 3510–22–F

Patent and Trademark Office

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 13).

Agency: Patent and Trademark Office (PTO).

Title: Patent Processing (Updating).

Agency Approval Number: 0651–0031.

Form Numbers: PTO/SB/08A/08B/09/10/11/12/21/22/23/24/25/26/31/32/42/43/61/61PCT/62/63/64/64PCT/67/68/69/91/92/93/97.

Type of Request: Revision of a currently approved collection.

Burden: 647,720 hours.

Number of Respondents: 364,000.

Average Hours Per Response:

.1 hour for PTO/SB/22/32/92/93/97
.1 hour for PTO/SB/22/32/92/93/97
.2 hour for PTO/SB/21/24/25/26/43/62/63/31/67/68/69/91
.3 hour for PTO/SB/09/10/11/12
.5 hour for PTO/SB/23
1 hour for PTO/SB/61/61PCT/64/64PCT
2 hours for PTO/SB/08A/08B/42

Needs and Uses: The purpose of this information collection is to permit the PTO to determine whether a patent application during processing meets the criteria set forth in the patent statutes and regulations. The usage of the PTO forms, while not required, will ensure compliance with requirements and facilitate the automatic processing and digital image and/or optical character recognition scanning of application materials.

The information provided on the Information Disclosure forms (PTO/SB/08A/08B/42) will assist applicants in complying with the duty to disclose requirements of the patent statutes and regulations, and will further assist the PTO in examination of the application, and in maintaining pertinent information related to a patented file. The information provided on the Small Entity Status forms (PTO/SB/09/10/11/12) assist applicants, including independent inventors, small business concerns and non-profit organizations, to provide accurate and appropriate information to the Office in order to establish small entity status and thereby reduce their statutory fees as set forth in 35 U.S.C. 41 by 50 percent. The information provided on the Transmittal Form (PTO/SB/21) alerts the Patent and Trademark Office of the nature of the communication from the applicant relating to patent processing. The information on the Disclaimer forms (PTO/SB25/26/43/62/63) assists patentees in disclaiming any complete claim of a patent or the terminal part of the statutory term of a patent. The information provided on the Extension of Time forms (PTO/SB/22/23/32) assist applicants in deciding the length of extension of time requested in order to respond to Office communications having statutory periods for response. The information provided on the Petition To Revive forms (PTO/SB/61/61PCT/64/64PCT) outline what an applicant must do to revive a patent application which has become abandoned, either unintentionally or unavoidably. These forms spotlight the different criteria for the two scenarios, including the need for a fee, the required information for a proper response and whether small entity status is appropriate. The information on the Express Abandonment form (PTO/SB24) assists applicants in requesting abandonment of an application while at the same time reminding applicant of a continuing application which has been filed. The information provided on the Notice of Appeal form (PTO/SB/31) assists applicants for patents or owners of patents under reexamination in appealing the decision of the primary examiner. The information provided on the Power to Inspect/Copy form (PTO/SB/67) assists applicants, counsel of record or the assignee to designate all third parties who are entitled to inspect/copy the application and the information on Request for Access of Abandoned Application form (PTO/SB/68) assists the public in supplying the appropriate information necessary to obtain the abandoned application file. The information on the Certificate of Mailing forms (PTO/SB/92/93) assist applicant in receiving, as the response date, the date on which response papers are deposited with the U.S. Postal Service or sent by facsimile transmission directly to the PTO. The information on the Petition Routing Slip (PTO/SB/69) assists in efficiently routing and expeditiously processing petition papers which have been filed at the PTO, and the information provided on the Deposit Accout Order Form (PTO/SB/91) assists the PTO in processing orders for articles and/or services.

Affected Public: Individuals or households, Business or other for-profit institutions, Not-for-profit institutions, Farms, State, Local or Tribal Government, and Federal Government.

Frequency: When filing response during the prosecution of a patent application.

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

OMB Desk Officer: Maya A. Bernstein, (202) 395–4816.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Maya Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–19600 filed 7–31–96; 8:45 a.m.]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of performance review board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act of 1978, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairperson: Donald Tendick, Acting Executive Director. Members: David Merrill, Executive Assistant to the Acting Chairman, Office of the Chairman; Pat Nicolette, Acting General Counsel, Office of General Counsel; Andrea Corcoran, Director, Division of Trading and Markets; Geoffrey Aronow, Director, Division of Enforcement; Blake Imel, Acting Director, Division of Economic Analysis.

DATE: This action was effective July 26, 1996.

ADDRESS: Commodity Futures Trading Commission, Office of Human Resources, Suite 7200, 1155 21st Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Jayne Seidman, Director, Office of Human Resources, Commodity Futures Trading Commission, Suite 7200, 1155 21st Street NW., Washington, DC 20581, (202) 418–5010.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published Federal Register Notice, May 30, 1995.

Issued in Washington, DC on July 26, 1996.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 96–19570 Filed 7–31–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space and Missile Tracking System (SMTS)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space and Missile Tracking System (SMTS) will meet in closed session on August 6–7 and August 13–14, 1996 at the Beckman Center, Irvine, California. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, these meetings are scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the viability of accelerating the SMTS development prior to the baseline 2006 date.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19512 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Global Positioning System, Phase II

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System, Phase will meet in closed session on August 7–8, 1996 at MIT, Lincoln Laboratory Office, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine affordable options in providing a robust position, navigation and timing capability.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19513 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS)

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS) will meet in closed session on August 13–14, 1996 at the Beckman Center, Irvine, California. In order for the Task Force to obtain time sensitive classified briefing, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop an independent assessment of the analytic tools and models employed in the DoD internal DAWNS effort. Specifically, the Task Force will (1) assess the analysis developed in part one of the study, (2) evaluate the soundness of the analytic approach proposed for part two, and (3) review the alternatives—developed in part two to ensure that they are balanced and representative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19514 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Image-Based Automatic Target Recognition

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on August 20–21 at Science

Applications International Corporation, McLean, Virginia; and on September 10–11, 1996 at Erim, Michigan.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term . The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19515 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice to Amend Record Systems

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is precipitated by the Defense Nuclear Agency changing its name to Defense Special Weapons Agency.

DATES: The amendments will be effective on September 3, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDA 05

SYSTEM NAME:

Human Radiation Research Review.

SYSTEM LOCATION:

Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398; and the Office of the Under Secretary of Defense for Acquisition and Technology, Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were or may have been the subject of tests involving ionizing radiation or other human-subject experimentation; individuals who have inquired or provided information to the Department of Energy Helpline or the Department of Defense Human Radiation Experimentation Command Center concerning such testing.

Military and DoD civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 or the occupation of Hiroshima and Nagasaki are already included in the Defense Special Weapons Agency's Nuclear Test Personnel Review (NTPR) program and are not part of this effort. The Defense Nuclear Agency's system of records notice that covers the NTPR is HDSWA 010, entitled Nuclear Test Participants. However, inquiries referred from the Helpline that later are determined to fall within this category will be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes an individual's name, Social Security Number or service number, last known or current address, occupational information, dates and extent of involvement in an experiment, exposure data, medical data, medical history of subject and relatives, and other documentation of exposure to ionizing radiation or other agents.

The system contains information abstracted from historical records, and information furnished to the Department of Defense, Department of Energy or other Federal Agencies by affected individuals or other interested parties.

Records include human radiation experimentation conducted from 1944 to the present. However, experiments conducted after May 20, 1974 (the date of issuance of the Department of Health, Education and Welfare Regulations for the Protection of Human Subjects, 45 CFR part 46), may be covered by other systems of records.

Common and routine medical practices, such as established diagnostic and treatment methods involving incidental exposures to ionizing radiation are not included within this system.

Examples of such methods are panorex radiographs for dental evaluations and thyroid scans for the evaluation and treatment of hypo/hyperthyroidism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, E.O. 12891 (January 15, 1994), E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of human radiation experimentation; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the exposure of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to officials and contract personnel of the Human Radiation Experimentation Interagency Working Group as well as other designated government agencies, for the purposes described above. These agencies are the National Aeronautics and Space Administration; Department

of Justice; Department of Energy; Department of Health and Human Services; Department of Veterans Affair; the White House Advisory Committee; Central Intelligence Agency; and Office of Management and Budget.

The 'Blanket Routine Uses' published at the beginning of the Office of the Secretary of Defense's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities.

RETRIEVABILITY:

Records are retrieved by case number, name, study control number, Social Security Number, or service number.

SAFEGUARDS:

Access to or disclosure of information is limited to authorized personnel. Paper records filed in folders, microfilm/fiche and computer printouts are stored in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a controlled area within limited access facilities. Access to computer programs is controlled through software applications that require validation prior to use.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the command center until all claims have been settled and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Under Secretary of Defense of Acquisition and Technology, Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398, or Under Secretary of Defense for Acquisition and Technology, Office of the Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20310–3010.

Individual should provide full name, Social Security Number, or service number, and if known, case or study control number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398, or Under Secretary of Defense, Office of the Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

Individuals should provide full name, Social Security Number, or service number, and if known, case or study control number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be collected directly from individuals, as well as extracted from historical records to include personnel files and lists, training files, medical records, legal case files, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, organizational and institutional administrative files, and related sources. The specific types of records used are determined by the nature of an individual's exposure to radiation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

WUSU20

SYSTEM NAME:

Personnel Radiation Exposure Records.

SYSTEM LOCATION:

Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799;

Armed Forces Radiobiology Research Institute, Bethesda, MD 20889–5603; and

Field Command, Defense Special Weapons Agency, Kirtland Air Force Base, MX 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, contractors, or visitors who enter a facility or area requiring the wearing of a radiation dosimeter.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, date of birth, current and previous radiation exposure history, dates and places of employment, records of individual's training in radiation safety, dates of exposures, citizenship, information on pregnancy, areas visited or worked, dates of arrival and departure, organization, assigned department, bioassay information, grade/rank, work phone and location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2113, Uniformed Services University of the Health Sciences; Atomic Energy Act of 1954, 42 U.S.C. 2013, Military Construction Act of 1977 (Pub.L. 94–367), and E.O. 9397.

PURPOSE(S):

For use by university or institute officials, employees, and authorized contractors, to provide documentation of any exposure to radiation which might be experienced by an individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be reviewed by the U.S. Nuclear Regulatory Commission (NRC) as part of NRC's on-going administration of the Materials License, and by the Radiation Safety Committee or the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

The 'Blanket Routine Uses' set forth at the beginning of the USUHS compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, paper records in file folders, microfiche/film and automated records on magnetic tapes, disks and computer products.

RETRIEVABILITY:

Records are accessed by name, Social Security Number, or department.

SAFEGUARDS:

Computer equipment and records are in controlled access areas protected by guards, intrusion alarms, and coded locks. Manual records are secured in

locked cabinets or vaults. Automated records are protected by user identification codes and passwords which limit access to the system.

RETENTION AND DISPOSAL:

For students or employees, records are kept for 75 years. For visitors, records are retired after two years to a record holding area for 75 year retention.

SYSTEM MANAGER(S) AND ADDRESS:

Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Written requests should include full name, Social Security Number, address, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Written requests should include full name, Social Security Number, address, and signature of the requester.

CONTESTING RECORD PROCEDURES:

The USUHS' rules for accessing records and for contesting contents and appealing initial determinations are contained in OSD Administrative Instruction 81; 32 CFR part 315; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from individual's and/or their dosimetry or bioassay records, previous educational facilities or employers, and other personal medical or radiation-related records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–19518 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–F

Senior Executive Service Performance Review Board

AGENCY: Department of Defense, Office of Inspector General.

ACTION: Notice.

SUMMARY: The following individuals comprise the standing roster of the Office of the Inspector General, Department of Defense Senior Executive Service Performance Review Board.

David A. Brinkman, Director, Analysis and Followup, OAIG—Auditing
C. Frank Broome, Director for Departmental Inquiries
Donald E. Davis, Deputy Assistant Inspector General for Audit Policy and Oversight
William G. Dupree, Deputy Assistant Inspector General for Investigations
Thomas Gimble, Director, Readiness and Operational Support, OAIG—Auditing
Paul J. Granetto, Director, Contract Management, OAIG—Auditing
Michael G. Huston, Director, Analysis, Planning and Technical Support, OAIG—Auditing
John F. Keenan, Director, Investigative Operations, OAIG—Investigations
Joel L. Leson, Deputy Assistant Inspector General for Administration and Information Management
Roberet J. Lieberman, Assistant Inspector General for Auditing
Nicholas T. Lutsch, Assistant Inspector Genral for Administration and Information Management
Donald Mancuso, Assistant Inspector General for Investigations
Russell A. Rau, Assistant Inspector General for Policy and Oversight
John C. Speedy III, Deputy Assistant Inspector General for Program Evaluation, OAIG—Auditing
David K. Steensma, Deputy Assistant Inspector General for Auditing
Shelton R. Young, Director, Logistics Support, OAIG—Auditing
Stephen A. Whitlock, Special Assistant for Ethics and Internal Programs, OAIG—A&IM

Dated: July 25, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–19510 Filed 7–31–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Community Redevelopment Authority and Available Surplus Buildings and Land at Griffiss Air Force Base, Located in Oneida County, NY

SUMMARY: This notice provides information regarding the surplus property at Griffiss Air Force Base (AFB), Rome, NY and information about the local redevelopment authority that has been established to plan the reuse of Griffiss AFB. The property is located east of downtown Rome. The property is accessible from the west via State Route 46, and from the south via State Route 49.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Lemaire, Site Manager, Air Force Base Conversion Agency, 153 Brooks Road, Griffiss AFB, NY 13441–4105, telephone (315) 330–2275.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Assistance Act of 1994.

Notice of Surplus Property

Pursuant to paragraph (7)(B) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421), the following information regarding the redevelopment authority and surplus property at Griffiss AFB, Rome, NY is published in the Federal Register.

Local Redevelopment Authority

The local redevelopment authority for Griffiss AFB, Rome, NY for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the Griffiss Local Development Corporation (GLDC). The Executive Director of the GLDC is Mr. Steven J. DiMeo. All inquiries should be addressed to: Mr. Steven J. DiMeo, Executive Director, 153 Brooks Road, Rome, NY 13441–4105, (315) 338–0393.

Surplus Property Descriptions

The following is a listing of the land and facilities at Griffiss AFB, Rome, NY that are surplus to the Federal government.

Land

Approximately 1,643 acres of land at Griffiss AFB. These areas will be available September 28, 2000.

Buildings

Improvements include office, industrial and commercial buildings, and hangars and support buildings adjacent to the airfield.

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the

homeless, and other interested parties located in the vicinity of Griffiss AFB, Rome, NY shall submit to the GLDC, a notice of interest, of such governments, representatives, and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned, for the desired surplus property. Pursuant to paragraph 7(C) of Section 2905(b), the GLDC shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation with New York the date by which expressions of interest must be submitted.

Pasty J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–19548 Filed 7–31–96; 8:45 am]

BILLING CODE 3910–01–W

Department of the Navy

Notice To Reopen the Public Comment Period and To Announce Public Hearings for the Draft Environmental Impact Statement (DEIS) for Shock Testing the SEAWOLF Submarine

SUMMARY: Per Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (DoN) prepared and filed with the U.S. Environmental Protection Agency a DEIS evaluating the environmental effects for the shock testing for the SEAWOLF Submarine, at a site to be located offshore of either Norfolk, Virginia, or Mayport, Florida. DoN is the lead agency and the National Marine Fisheries Service (NMFS) is a cooperating agency in the development of the DEIS. NMFS is concurrently evaluating DoN's request for a Letter of Authorization for the Incidental Take of Marine Mammals in their regulatory role under the Marine Mammal Protection Act.

Notice of Availability for the DEIS appeared in the Federal Register on June 14, 1996. That Notice stated that comments on the DEIS were due by July 29, 1996. DoN is reopening the public comment period that will now extend through September 17, 1996. All written comments shall be postmarked no later than that date. This comment period coincides with the NMFS comment period on its Proposed Rule for Incidental Take of Marine Mammals for the DoN's proposed shock testing of SEAWOLF.

ADDRESSES: The public hearings will be jointly hosted by DoN and NMFS. The public is invited to comment on the DEIS and Proposed Rule. The hearings have been scheduled as follows: (1) August 19, 1996, 10 AM to 4 PM, at Silver Spring Metro Center, Building 4, 1st Floor Conference Room, 1305 East-West Highway, Silver Spring, MD; (2) August 20, 1996, 7 PM to 10 PM, Lafayette Winona Middle School, 1701 Alsace Avenue, Norfolk, VA; and (3) August 21, 1996, 7 PM to 10 PM, Mayport Middle School, 2600 Mayport Road, Atlantic Beach, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Will Sloger, Code 064WS, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, telephone (803) 820–5797, FAX (803) 820–5993.

Dated: 26 July 1996.

M.A. Waters,

Federal Register Liaison Officer.

[FR Doc. 96–19549 Filed 7–31–96; 8:45 am]

BILLING CODE 3810–FF–M

Notice of Performance Review Board Membership

SUMMARY: Per 5 U.S.C. 4314 (c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRB's). The purposes of the PRB's is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor, to make recommendations to appointing officials regarding acceptance or modification of the performance rating, and to make recommendations for monetary performance awards. Composition of the specific PRB's will be determined on an ad hoc basis from among individuals listed below:

Altwegg, D.M. Mr.
Anderson, J. Bgen
Andriani, C.R. Mr.
Angrist, E. Mr.
Atkins, J.A. Mr.
Bailey, D.C. Mr.
Bisson, A. Dr.
Blatstein, I.M. Dr.
Bradley, L.A. Ms.
Branch, E.B. Mr.
Brant, D.L. Mr.
Brooke, R.K. Mr.
Buckley, B. Capt
Cali, R.T. Mr.
Cataldo, P.R. Mr.
Camp, J.R. Mr.
Carter, R.L. Mr.
Cassidy, W.J. Mr.
Chamberlin, E. Radm
Christie, D.P. Hon.
Clark, C.C. Ms.
Coffey, T. Dr.
Collie, J.D. Mr.
Cook, J.A. Radm
Commons, G.L. Ms.
Conran, T.C. Mr.
Craine, J.W. Radm
Cuddy, J.V. Mr.
Czelusniak, D.P. Mr.
Danzig, R.J. Hon.
Dawson, C.J. Radm
Decorpo J. Dr.
Dempsey, J. Ms.
Desalme, J.W. Mr.
Dillon, B.L. Mr.
Dilworth, G. Mr.
Distler, D. Mr.
Dixson, H.L. Mr.
Doak, R. Mr.
Doherty, L.M. Dr.
Dominguez, M.L. Mr.
Donalson, E.L. Mr.
Douglass, J. Hon.
Douglass, T.E. Mr.
Draim, R.P. Mr.
Duddleston, R.J. Mr.
Dudley, W.S. Dr.
Durham. D.L. Dr.
Eaton, W.D. Mr.
Elliott, R.D. Mr.
Evans, G.L. Ms.
Felton, R.M. Mr.
Fiocchi, T.C. Mr.
Ford, F.B. Mr.
Frick, R.E. Radm
Gaffney, P. Radm.
Garvert, W.C. Mr.
Geiger, C.G. Mr.
Goldschmidt, J.X. Mr.
Gottfried, J.M. Ms.
Grossman, J.C. Mr.
Grundman, B. Mr.
Guertin, J.R. Dr.
Guida, R.A. Mr.
Haaland, S. Mr.
Hammes, M.C. Mr.
Hammond, R.E. Mr.
Harman, D.P. Mr.
Hancock, W.J. Radm
Hannah, B.W. Dr.
Hartwig, E. Dr.
Hathaway, D.L. Mr.
Hauenstein, W.H. Mr.
Haut, D.G. Mr.
Haver, R.L. Mr.
Haynes, R.S. Mr.
Heath, K.S. Ms.
Henry, M.G. Mr.
Hicks, S.N. Mr.
Hildebrandt, A. Mr.
Holaday, D.A. Mr.
Honigman, S.S. Hon.
Hood, J.T. Radm
Howell, D.S. Ms.
Hubbell, P.C. Mr.
Huchting, G.A. Radm

Johnston, K.J. Dr.
Junker, B. Dr.
Kandaras, C. Ms.
Kaskin, J.D. Mr.
Kelly, L.J. Mr.
Kotzen, P.S. Ms.
Krasik, S.A. Ms.
Kreitzer, L.P. Mr.
Kuesters, J.J. Mr.
Langston, M.J. Mr.
Larsen Jr., D.P. Mr.
Laux, T.E. Mr.
Leach, R.A. Mr.
Lefande, R. Dr.
Leggieri, S.R. Ms.
Lewis, R.D. Ms.
Lopata, F.A. Mr.
Lynch, J.G. Mr.
Machin, R.C. Mr.
Martin, R.J. Mr.
Masciarelli, J.R. Mr.
Mattheis, W.G. Mr.
McBurnett, G.M. Ms.
McEleny, J.F. Mr.
McManus, C.J. Mr.
McNair, J.W. Mr.
McNair, S.M. Ms.
Melia, F.M. Mr.
Merritt, M.M. Mr.
Messerole, M. Mr.
Miller, E.E. Mr.
Moeller, R.L. Radm
Molzahn, W. Mr.
Montgomery Jr. Mr.
Moy, G.W. Dr.
Munsell, E.L. Ms.
Murphy, P.M. Mr.
Muth, C.M. Ms.
Mutter, C. Majgen
Nanos, G.P. Radm
Nedrow, R.D. Mr.
Nemfakos, C.P. Mr.
Nickell, J.R. Mr.
Nussbaum, D.A. Mr.
Olsen, M.A. Ms.
O'eill, T.J. Mr.
Oster, J.W. Majgen
Panek, R.L. Mr.
Paulk, R.D. Ms.
Pennisi, R.A. Mr.
Peters, R.K. Ms.
Phelps, F.A. Mr.
Phillips, G.P. Radm
Pirie Jr., R.B. Hon.
Porter, D.E. Mr.
Powers, B.F. Mr.
Rath, B. Dr.
Rathjen, R.A. Mr.
Renfro, J.G. Mr.
Richwine, D.A. Mgen
Riegel, K.W. Dr.
Robinson, B. Dr.
Robinson, P.M. Radm
Roderick, B.R. Mr.
Rostker, B. Hon.
Saalfeld, F. Dr.
Sanders, W.R. Mr.
Sansone, W. Mr.
Saul, E.L. Mr.
Savitsky, W.D. Mr.
Schaefer, W.J. Mr.
Schneider, P.A. Mr.
Schultz, R.E. Mr.
Schuster Jr. J. Mr.
Scott, R. Capt
Chaffer, R.L. Mr.
Shipway, J.F. Radm
Shoup, F.E. Dr.
Silva, E. Dr.
Sirmalis, J.E. Dr.
Somoroff, A.R. Dr.
Steidle, C.E. Radm
Steven, Radm
Stine, J.E. Mr.
Storey, R.C. Mr.
Strong, B.D. Radm
Stussie, W.A. Mr.
Sullivan, M.P. Radm
Thornett, R. Mr.
Tobin, P.E. Radm
Thomas, R.O. Mr.
Thompson, R.H. Mr.
Tinston, W.J. Radm
Tisone, A.A. Mr.
Tompkins, C.L. Mr.
Turnquist, C.J. Mr.
Uhler, D.G. Dr.
Verkoski, J.E. Mr.
Wagner, G.F. A. Radm
Welch, B.S. Ms.
Wessel, P.R. Mr.
Whalen, J. Mr.
Whiteway, R.N. Dr.
Whitman, E.C. Dr.
Whittemore, A.L. Ms.
Williams, G.P. Mr.
Williams, R.D. Radm
Wilson, T. Radm
Young, S.D. Ms.
Yount, G.R. Radm
Zanfagna, P.E. Mr.
Zdankiewicz, E. Mr.
Zimet, E. Dr.
Zimmerman Jr. H. Mr.
Zornetzer, S. Dr.

Dated: June 26, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–19551 Filed 7–31–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, 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 September 3, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 26, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Financial Report for the Endowment Challenge Grant Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 900.

Abstract: The financial report requires investment data from institutions for the purpose of assessing their progress in increasing their endowment fund resources. The data is also used to monitor compliance with regulatory provisions.

[FR Doc. 96–19557 Filed 7–31–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, August 13, 1996: 6:30 pm—9:30 pm. 7:00 pm to 7:30 pm (public comment session).

ADDRESSES: Coronado Hall, Taoseno Room,120 Civic Plaza Drive, Taos, New Mexico 87557, 505–753–8970.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970, or (505)262–1800.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Tuesday, August 13, 1996

6:30 PM Call to Order and Welcome
7:00 PM Public Comment
7:30 PM Old Business
8:30 PM Sub-Committee Reports
9:30 PM Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Brenda Karlstrum, at (800) 753–8970. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on July 24, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–19573 Filed 7–31–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Monticello Site; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

DATE AND TIME: Tuesday, August 20, 1996 7:00 p.m.–9:00 p.m.

ADDRESS: San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

FOR FURTHER INFORMATION CONTACT: Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Update on repository liner installation progress, Monticello surface and ground water discussion, reports from subcommittees on local training and hiring, health and safety, and future land use.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting.

Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303)–248–7727.

Issued at Washington, DC on July 25, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–19574 Filed 7–31–96; 8:45 am]

BILLING CODE 6450–01–P

Technical Summary Reports for Long-Term Storage of Weapons-Usable Fissile Materials and for Surplus Weapons-Usable Plutonium Disposition

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the Technical Summary Report for the Long-Term Storage of Weapons-Usable Fissile Materials and the Technical Summary Report for Surplus Weapons-Usable Plutonium Disposition. The first report summarizes DOE's assessment of the technical, cost, and schedule data for the reasonable alternatives for the long-term storage of weapons-usable fissile materials. The second report summarizes DOE's assessment of the technical, cost, and schedule data for disposition of the nation's plutonium surplus to national security requirements.

ADDRESSES: Requests for copies of the reports or comments on the reports should be directed to: the Office of Fissile Materials Disposition, U.S. Department of Energy, Post Office Box

23786, Washington DC 20026–3786. Copies of the reports can also be obtained by calling (answering machine) or faxing 1–800–820–5156. Comments are requested by August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Additional information about the storage and disposition of surplus fissile materials can be obtained by writing to U.S. Department of Energy, ATTN: MD–3, 1000 Independence Ave., SW, Washington, DC 20585, or telephoning (202) 586–2700. Information is also available on-line at the Office of Fissile Materials Disposition Internet site: ''http://web.fie.com/htdoc/fed/doe/fsl/pub/menu/any''

SUPPLEMENTARY INFORMATION:

Background

The reasonable alternatives for the storage of weapons-usable fissile material and the disposition of plutonium were determined by the DOE and published in the ''Summary Report of the Screening Process (DOE/MD–0002),'' dated March 29, 1995. The reasonable alternatives for long-term storage included upgrading existing storage facilities or constructing new storage facilities. The reasonable alternatives for PU Disposition included reactor, immobilization and deep borehole emplacement technologies. The environmental impacts of the reasonable alternatives for both long-term storage and plutonium disposition were analyzed and published in the ''Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement,'' dated February 1996.

Scope of Reports

The scope of the long-term storage report is limited to presenting the technical, cost and schedule data and assessment to support future decisions for storage of weapons-usable fissile materials, including highly enriched uranium and plutonium. The scope of the plutonium disposition report is limited to presenting the technical, cost, and schedule data for plutonium disposition and assessment to support future decision making.

DOE Reading Rooms

Copies of the reports as well as other technical information are available at the following locations:

Headquarters FOIA Reading Room, U.S. Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585

Albuquerque Operations Office, Technical Vocational Institute, 525 Buena Vista, SE, Albuquerque, NM 87106, Attn: Russ Gladstone (contractor), 505–224–3286, Elva Barfield (DOE), 505–845–4370

Nevada Operations Office, Department of Energy, Public Reading Room, 2753 South Highland Drive, P.O. Box 98518, Las Vegas, NV 89193–8518, Attn: Janet Fogg, 702–295–1128

Oak Ridge Operations Office, U.S. Department of Energy, Public Reading Room, 200 Administration Road, P.O. Box 2001, Oak Ridge, TN 37831–8501, Attn: Amy Rothrock, 615–576–1216

Richaldn Operations Office, Washington State University, Tri-Cities Branch Campus, 300 Sprout Road, Room 130 West, Richland, WA 99352, Attn: Terri Traub, 509–376–8583

Rocky Flats Office, Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminister, CO 80030, Attn: Dennis Connor, 303–469–4435

Savannah River Operations Office, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801, Attn: Paul Lewis, 803–641–3320, DOE Contact: Pauline Conner, 803–725–1408

Los Alamos National Laboratory, U.S. Department of Energy, c/o Los Alamos Community Reading Room, 1450 Central, Suite 101, Los Alamos, NM 87544, Attn: LANL Outreach Manager, 505–665–2127

Chicago Operations Office, Office of Planning, Communications & EEO, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, Attn: L. Pitchford, 708–252–2013

Amarillo Area Office, U.S. Department of Energy, Amarillo College, Lynn Library/Learning Center, P.O. Box 447, Amarillo, TX 79178, Attn: Karen McIntosh, 806–371–5400

Idaho Operations Office, Idaho Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83402, 208–526–0271

U.S. DOE Reading Room, Carson County Library, P.O. Box 339, Panhandle, TX 79068, Attn: Tom Walton, 806–537–3742, Kerry Campbell (contractor), 806–477–4381

Issued in Washington, DC, July 26, 1996.

Gregory P. Rudy,

Acting Director, Office of Fissile Materials Disposition.

[FR Doc. 96–19571 Filed 7–31–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed extension to Form EIA–28, ''Financial Reporting System'' (FRS) which is used to collect financial and other energy-related business information.

DATES: Written comments must be submitted on or before September 30, 1996. 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 of your intention to do so as soon as possible.

ADDRESSES: Send comments to Gregory P. Filas, Office of Energy Markets and End Use, EI–622, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, telephone number (202) 586–1347 or FAX (202)586–9753 or E-mail to: gfilas@eia.doe.gov.

FOR FURTHER INFORMATION: Requests for additional information or copies of the form and instructions should be directed to Gregory P. Filas at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, through its Form EIA–28, collects financial information and other measures of energy-related business efforts and results from major energy companies. Since the FRS data are collected on a uniform, segmented basis, the comparability of information across energy lines of business is unique to this reporting system. For example, petroleum activities can be compared to

activities in other energy lines of business or nonenergy areas, and domestic activities can be compared to foreign activities. The data are used to evaluate the competitive environment within which energy products are supplied and developed and to analyze the nature of institutional arrangements as they relate to energy resource development, supply, and distribution. The FRS report, entitled Performance Profiles of Major Energy Producers (Profiles), has been published for each of the reporting years 1977 through 1994. The Profiles report for 1995 will be published in December 1996.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

II. Current Actions

This is an extension with changes to an existing collection. The proposed extension is to December 31, 1999. The revisions to the form will update the categories of refinery output of motor gasoline collected on Schedule 5242 of the form. The form currently collects refinery output of leaded and unleaded motor gasoline. The categories will be changed from leaded and unleaded to reformulated, oxygenated, and other.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and changes. The following guidelines are provided to assist in the preparation of responses.

General Issues

EIA is interested in receiving comments from persons regarding:

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. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for this collection is estimated to average 633 hours per response. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What is the estimated (1) total dollar amount annualized for capital and start-up costs and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, July 26, 1996.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–19572 Filed 7–31–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

Proposed Information Collection and Request for Comments (FERC–716)

July 26, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments of on or before September 30, 1996.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–716 ''Good Faith Request for Transmission Services and Response by Transmitting Utility Under Sections 211(a) and 213 of the Federal Power Act, as amended, and added by

the Energy Policy Act'' (OMB No. 1902–0170) (PL93–3) is used by the Commission to implement the Statutory provisions of the Sections 211 and 213 of the Federal Power Act (EPA), 16 U.S.C. 824j, 8251 as amended by the Energy Policy Act of 1992 (Pub. L. 102–486) 106 Stat. 2776. Under Section 211, the Commission may order transmission service if it finds that such action would be in the public interest and would not unreasonable impair the continued reliability of systems affected by the order. No order may be issued unless the applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to filing the application with the Commission.

Section 213(a) requires a response by the transmitting utility. Unless the transmitting utility accommodates the request on mutually agreeable terms, it shall, within 60 days of receipt of the request, or other mutually agreed upon period, provide such applicant with a detailed written explanation of the basis for the transmitting utility's proposed rates, charges, terms and conditions for such services, as well as any physical constraints which would affect such service. The information is not filed with the Commission, however, the request and response may be analyzed as part of a Section 211 proceeding. The Commision implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR 2.20.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burder for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
20	1	200	4,000

Estimated cost burden to respondents: 4,000 hours/2,087 hours per year × $102,000 per year = $195,495.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate fo the burden of the proposed collection of information, including the validity of the methodology and assumptions used: (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19542 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

July 26, 1996.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, August 1, 1996 and Friday August 2, 1996 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19537 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–79–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Refund Report

July 26, 1996.

Take notice that on July 24, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing a Report of Gas Research Institute Tier 1 Refunds for 1995 calendar year overpayments. Great Lakes states that the refund report is being filed in accordance with the Commission's Order issued February 22, 1995 in Docket No. RP95–124–000 (70 FERC ¶ 61,205).

Great Lakes states that a refund amount of $219,707 was received from GRI on June 28, 1996. Great Lakes further states this amount was subsequently refunded to eligible firm transportation customers on a pro-rata basis. Great Lakes states that the report filed reflects the GRI refund amounts allocated to each eligible firm transportation customers for the 1995 calendar year.

Great Lakes states that a copy of the filing is being served upon each of Great Lakes' firm customers and the Public Service Commissions of the states of Minnesota, Wisconsin and Michigan, and the Gas Research Institute.

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 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 must be filed on or before August 2, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19534 Filed 7–31–96; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP96–209–001]

Koch Gateway Pipeline Company; Notice of Filing

July 26, 1996.

Take notice that on July 2, 1996, Koch Gateway Pipeline Company (Koch Gateway) submitted for filing supplemental information related to its Cash-in/Cash-out Report filed on April 11, 1996 (Report). This information is being filed pursuant to the Commission's June 17, 1996, Order on Cash-in/Cash-out Report. Koch Gateway has included a narrative to its Report and the workpapers which support and clarify the original filing. This additional information addresses the questions raised by the parties and provides an additional basis upon which the Commission can conduct a more detailed analysis of the filing.

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 regulations. All such protests must be filed on or before August 1, 1996. Protests will be considered by the Commission in determining action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19538 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–13–000]

Northern Illinois Gas Company; Notice of Petition for Rate Approval

July 26, 1996.

Take notice that on July 15, 1996, Northern Illinois Gas Company, (NI–Gas), filed pursuant to section 284.224 and 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the rates to be charged by NI–Gas in providing services under the blanket certificate issued to NI–Gas in Docket No. CP92–481–000.

NI–Gas proposes (a) to charge firm storage customers a two-part reservation rate, with a maximum monthly deliverability charge of $1.0125 per MMBtu and a maximum monthly capacity charge of $0.0225 per MMBtu, (b) to charge interruptible storage customers a maximum daily rate of $0.0665 per MMBtu, (c) to charge interruptible transportation customers a maximum rate of $0.0805 per MMBtu, and (d) to make various non-rate changes in its Operating Statement. NI–Gas also will continue to charge firm storage customers a fuel rate, based on the cost of gas.

NI–Gas states that it is an intrastate natural gas distribution utility that provides interstate interruptible transportation and storage services and interstate firm storage service on a non-discriminatory basis, pursuant to section 284.224 of the Commission's regulations. NI–Gas owns and operates a natural gas transmission, underground (aquifer) storage and distribution system network. NI–Gas proposes an effective date of July 15, 1996.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 12, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19536 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–651–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

July 26, 1996.

Take notice that on July 22, 1996, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–651–000 for approval under Sections 157.205 and 157.212 of the Commission's Regulations to construct and operate, a delivery point in order to provide service to Cullman-Jefferson Counties Gas District (Cullman-Jefferson) under Applicant's blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes this construction to provide transportation service to Cullman-Jefferson at a new delivery point. This new delivery point will allow Cullman-Jefferson to provide natural gas service to additional customers on its distribution system. Southern proposes to locate the delivery point near Mile Post 201.438 on its 24-inch 2nd North Main Line in Jefferson County, Alabama. The estimated cost of the facility is $265,700. Applicant states that gas will be delivered to the new delivery point under existing FT and IT Service Agreements. The Maximum Daily Delivery Quantity would be 9,000 Mcf per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19532 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–653–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

July 26, 1996.

Take notice that on July 23, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–653–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by reclaim facilities originally installed for the receipt of transportation gas from Trinity Pipeline, Inc. (Trinity) in Washington County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that Trinity has agreed to the reclaim of the facilities. The total reclaim cost is estimated to be $3,547 with a salvage value of $13,470.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19533 Filed 7–31–96; 8:45 am]

Billing Code 6717–01–M

[Docket No. ER96–2435–000, et al.]

J.D. Enterprises, et al.; Electric Rate and Corporate Regulation Filings

July 25, 1996.

Take notice that the following filings have been made with the Commission:

1. J.D. Enterprises

[Docket No. ER96–2435–000]

Take notice that on July 5, 1996, J.D. Enterprises, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

J.D. Enterprises intends to engage in electric power and energy transactions as marketer and a broker. In transactions where J.D. Enterprises sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. J.D. Enterprises is not in the business of generating, transmitting, or distributing electric power.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Baltimore Gas and Electric Company

[Docket No. ER96–2436–000]

Take notice that on July 16, 1996, Baltimore Gas and Electric Company (BGE), filed a Service Agreement dated June 17, 1996 with Phibro Inc. (Phibro) under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Phibro under the provisions of the Tariff. BGE requests an effective date of June 17, 1996 for the Service Agreement. BGE states that a copy of the filing were served upon the Public Service Commission of Maryland.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER96–2437–000]

Take notice that on July 16, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, an executed Service Agreement between PGE and National Gas & Electric L.P.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL95–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective July 1, 1996.

Copies of this filing were served upon National Gas & Electric L.P.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER96–2439–000]

Take notice that on July 15, 1996, Duke Power Company (Duke), tendered for filing Schedule MR Transaction Sheets under Duke's FERC Electric Tariff, Original Volume No. 3 for the quarter ended June 30, 1996.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Colorado

[Docket No. ER96–2440–000]

Take notice that on July 17, 1996, Public Service Company of Colorado, tendered for filing a Third Revision to Exhibit B of its Contract for Interconnections and Transmission Service with Tri-State Generation and Transmission Association, Inc. as contained in Public Service's Rate Schedule FERC No. 24, to change specified delivery points.

Public Service requests an effective date of June 25, 1996, for this filing.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2441–000]

Take notice that on July 17, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of June 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2442–000]

Take notice that on July 17, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement

provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of June 13, 1996.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–2443–000]

Take notice that on July 17, 1996, Consolidated Edison Company of New York Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 127, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of July 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER96–2444–000]

Take notice that on July 17, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, First Revised Volume No. 2, executed Service Agreement for Grays Harbor County Public Utility District.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL95–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective July 1, 1996.

A copy of this filing was served upon Grays Harbor County PUD as noted in the filing letter.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corporation

[Docket No. ER96–2445–000]

Take notice that on July 17, 1996, Florida Power Corporation, tendered for filing a service agreement providing for service to PECO Energy Company, pursuant to Florida Power's power sales tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on July 18, 1996.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER96–2446–000]

Take notice that on July 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 11, 1996 with Central Hudson Gas & Electric Corporation (CENTRAL HUDSON) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds CENTRAL HUDSON as a customer under the Tariff.

PECO requests an effective date of July 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to CENTRAL HUDSON and to the Pennsylvania Public Utility Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–2447–000]

Take notice that on July 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 11, 1996 with Florida Power Corporation (FLORIDA POWER) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds FLORIDA POWER as a customer under the Tariff.

PECO requests an effective date of July 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to FLORIDA POWER and to the Pennsylvania Public Utility Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER96–2448–000]

Take notice that on July 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 11, 1996 with Ohio Edison Company (OE) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds OE as a customer under the Tariff.

PECO requests an effective date of July 11, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to OE and to the Pennsylvania Public Utility Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER96–2449–000]

Take notice that on July 17, 1996, PECO Energy Company (PECO), filed a Service Agreement dated July 10, 1996 with Utilities Commission-New Smyrna Beach, Florida (UCNSBF) under PECO's FERC Electric Tariff, First Revised Volume No. 4 (Tariff). The Service Agreement adds UCNSBF as a customer under the Tariff.

PECO requests an effective date of July 10, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to UCNSBF and to the Pennsylvania Public Utility Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER96–2450–000]

Take notice that on July 17, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and CNG Power Service Corporation (CNG). The Transmission Service Agreement allows CNG to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, under Docket No. ER95–1474–000, Rate Schedule STNF.

Wisconsin Electric requests an effective date of July 30, 1996 and waiver of the Commission's notice requirements to allow for economic transactions. Copies of the filing have been served on CNG, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Electric Power Company

[Docket No. ER96–2451–000]

Take notice that on July 17, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and VTEC Energy Inc. (VTEC). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows VTEC to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474–000.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been

served on VTEC, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER96–2452–000]

Take notice that on July 17, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Entergy (Entergy). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Entergy to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474–000.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Entergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company)

[Docket No. ER96–2453–000]

Take notice that on July 17, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the following Transmission Service Agreement between NSP and Cenerprise, Inc.

NSP requests that the Commission accept the agreements effective June 17, 1996, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER96–2454–000]

Take notice that on July 17, 1996, Commonwealth Edison Company (ComEd), submitted for filing five Service Agreements, establishing Atlantic City Electric Co. (Atlantic), dated February 29, 1996, GPU Service Corporation (GPU), dated March 6, 1996, PanEnergy Power Services, Inc. (PanEnergy), dated May 17, 1996, Duke Power Company (Duke), dated June 26, 1996, and Delmarva Power and Light Company (Delmarva), dated June 26, 1996, as customers under the terms of ComEd's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

ComEd requests an effective date of June 17, 1996 for the Service Agreements between ComEd and Atlantic, GPU and PanEnergy, and an effective date of June 26, 1996 for the Service Agreements between ComEd and Duke and Delmarva, and accordingly seeks waiver of the Commission's regulations. Copies of this filing were served upon Atlantic, GPU, PanEnergy, Duke, Delmarva and the Illinois Commerce Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER96–2456–000]

Take notice that on July 18, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1996 between Cinergy, CG&E, PSI and Vastar Power Marketing, Inc. (Vastar).

The Interchange Agreement provides for the following service between Cinergy and Vastar.

1. Exhibit A—Power Sales by Vastar
2. Exhibit B—Power Sales by Cinergy

Cinergy and Vastar have requested an effective date of July 22, 1996.

Copies of the filing were served on Vastar Power Marketing, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER96–2457–000]

Take notice that on July 18, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and PacifiCorp.

Cinergy and PacifiCorp are requesting an effective date of July 22, 1996.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Cinergy Services, Inc.

[Docket No. ER96–2458–000]

Take notice that on July 18, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Duke Power Company.

Cinergy and Duke Power Company are requesting an effective date of July 22, 1996.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. MidAmerican Energy Company

[Docket No. ER96–2459–000]

Take notice that on July 18, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission a Firm Transmission Service Agreement with Coastal Electric Services Company (Coastal) dated June 27, 1996, and Non-Firm Transmission Service Agreement with Coastal dated June 27, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of June 27, 1996 for the Agreements with Coastal, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of this filing on Coastal, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER96–2460–000]

Take notice that on July 18, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which TransCanada Power Corporation will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreements in Illinois Power's tariff.

Illinois Power has requested an effective date of July 15, 1996.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 18 CFR 385.214). All such motions

or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19578 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1358–006, *et al.*]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

July 26, 1996.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company

[Docket No. ER95–1358–006]

Take notice that on July 15, 1996, Northern States Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Bonneville Power Administration

[Docket Nos. EF96–2011–000 and EF96–2021–000]

Take notice that the Bonneville Power Administration (BPA) on July 26, 1996, tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(a)(2). BPA seeks interim approval of its proposed rates effective October 1, 1996, pursuant to Commission Regulation 300.20, 18 CFR 300.20. Pursuant to Commission Regulation 300.21, 18 CFR 300.21, BPA seeks final confirmation of the proposed rates for the periods set forth in this notice.

BPA states that its wholesale power and transmission rates are proposed to be modified. BPA further states that while market forces have prompted BPA to lower its wholesale power rates, the resulting loads are forecasted to increase revenues over the 5-year test period by approximately $1826 million (excluding the residential exchange), which represents an increase of approximately 20.7 percent. BPA's transmission rates are designed to increase revenues from transmission-only business by $144 million over the test period, an increase of 16 percent. With these increases BPA's total test period revenues from its power and transmission business lines (excluding the residential exchange) will be approximately $11.7 billion.

BPA requests approval effective October 1, 1996, through September 30, 2001, for the following proposed wholesale power rates: PF–96 Priority Firm Power Rate, NR–96 New Resource Firm Power Rate, IP–96 Industrial Firm Power Rate, IPG–96 Industrial Firm Power Rate, VI–96 Variable Industrial Rate, NF–96 Nonfirm Energy Rate, RP–96 Reserve Power Rate, PS–96 Power Shortage Rate, and the APS–96 Ancillary Products and Services Rate.

In addition, for those preference customers taking service on a billing month that does not coincide with the calendar month, BPA requests extension of the PF–95 rate for one month to enable transition from bundled rates for priority firm power to unbundled rates. Those customers will be billed at the PF–96 rates starting with their first billing period that begins after October 1, 1996. Those customers will continue to be billed at the PF–96 rates through the billing period starting in September 2001 so, for those customers only, BPA requests approval of the PF–96 rate through October 30, 2001.

BPA requests approval of the General Rate Schedule Provisions (GRSPs), including the Impact Aid Methodology, associated with BPA's power rates for the period October 1, 1996, through September 30, 2001. The GRSPs will apply to both wholesale power rates and transmission rates.

BPA requests approval effective October 1, 1996, through September 30, 2006, for the FPS–96 Firm Power Products and Services Rate. BPA states that this approval is necessary for it to compete and assure cost recovery.

BPA requests approval effective October 1, 1996, through September 30, 2001, for the following proposed transmission rate schedules: FPT–96.1 Formula Power Transmission, FPT–96.3 Formula Power Transmission, IR–96 Integration of Resources, NT–96 Network Integration Transmission Rate, NTP–96 Network Integration Transmission Rate, PTP–96 Point-to-Point Firm Transmission Rate, RNF–96 Reserved Nonfirm Transmission Rate, ET–96 Energy Transmission, IS–96 Southern Intertie Transmission, IM–96 Montana Intertie Transmission Rate, IE–96 Eastern Intertie Transmission, TGT–965 Townsend-Garrison Transmission, MT–96 Market Transmission, UFT–96 Use-of-Facilities Transmission, AF–96 Advance Funding Rate. For those customers who, as noted above, will continue to be billed at the PF–96 rates through the billing period starting in September 2001, BPA requests approval of the NTP–96 rate through October 30, 2001.

Comment date: August 12, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Power Clearinghouse IGM, Inc., VTEC Energy Inc., Yankee Energy Marketing Company, Yankee Energy Marketing Company, WPS Energy Services, Inc., North American Power Brokers, Inc.

[Docket No. ER95–914–005, Docket No. ER95–1439–003, Docket No. ER95–1855–003, Docket No. ER96–146–001, Docket No. ER96–146–002, Docket No. ER96–1088–003, Docket No. ER96–1156–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 22, 1996, Power Clearinghouse, Inc. filed certain information as required by the Commission's May 11, 1995, order in Docket No. ER95–914–000.

On July 12, 1996, IGM, Inc. filed certain information as required by the Commission's August 28, 1995, order in Docket No. ER95–1439–000.

On July 11, 1996, VTEC Energy, Inc. filed certain information as required by the Commission's November 6, 1995, order in Docket No. ER95–1855–000.

On July 18, 1996, Yankee Energy Marketing Company filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–146–000.

On July 18, 1996, Yankee Energy Marketing Company filed certain information as required by the Commission's November 29, 1995, order in Docket No. ER95–146–000.

On July 15, 1996, WPS Energy Services, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On July 22, 1996, North American Power Brokers, Inc. filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1156–000.

4. National Gas & Electric L.P., Torco Energy Marketing, Inc., MG Electric Power, Inc., Eclipse Energy Inc., Ashton Energy Corporation, Energy Resource Marketing, Inc., Gulfstream Energy, LLC

[Docket No. ER90–168–028, Docket No. ER92–429–009, Docket No. ER93–839–003, Docket No. ER94–1099–009, Docket No. ER94–1246–008, Docket No. ER94–1580–007, Docket No. ER94–1597–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 19, 1996, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On July 15, 1996, Torco Energy Marketing, Inc. filed certain information as required by the Commission's May 18, 1992, order in Docket No. ER92–429–000.

On July 18, 1996, MG Electric Power, Inc. filed certain information as required by the Commission's October 19, 1993, order in Docket No. ER93–839–000.

On July 22, 1996, Eclipse Energy Inc. filed certain information as required by the Commission's June 15, 1994, order in Docket No. ER94–1099–000.

On July 22, 1996, Ashton Energy Corporation filed certain information as required by the Commission's August 10, 1994, order in Docket No. ER94–1246–000.

On July 18, 1996, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994, order in Docket No. ER94–1580–000.

On July 19, 1996, Gulfstream Energy, LLC filed certain information as required by the Commission's October 21, 1994, order in Docket No. ER94–1597–000.

5. Texas-Ohio Power Marketing, Inc., Petroleum Source & Systems Group, SouthEastern Energy Resources, Inc., J. Anthony & Associates Ltd., K Power Company, KN Marketing, Inc.

[Docket No. ER94–1676–008], [Docket No. ER95–266–006], [Docket No. ER95–385–006], [Docket No. ER95–784–000], [Docket No. ER95–792–004], [Docket No. ER95–869–005] (not consolidated)

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On July 18, 1996, Texas-Ohio Power Marketing, Inc. filed certain information as required by the Commission's October 31, 1994, order in Docket No. ER94–1676–000.

On July 12, 1996, Petroleum Source & Systems Group filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

On July 22, 1996, SouthEastern Energy Resources, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–385–000.

On July 19, 1996, J. Anthony & Associates Ltd. filed certain information as required by the Commission's May 31, 1995, order in Docket No. ER95–784–000.

On July 12, 1996, K Power Company filed certain information as required by the Commission's June 19, 1995, order in Docket No. ER95–792–000.

On July 19, 1996, KN Marketing, Inc. filed certain information as required by the Commission's May 26, 1995, order in Docket No. ER95–869–000.

6. Wisconsin Electric Power Company

[Docket No. ER95–1474–001]

Take notice that on July 19, 1996, Wisconsin Electric Power Company tendered for filing its compliance filing in the above-referenced docket pursuant to the Commission's order of June 13, 1996 in this proceeding.

Comment date: August 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Energy, Inc.

[Docket No. ER96–2278–000]

Take notice that on July 12, 1996, Midwest Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER96–2407–000]

Take notice that on July 15, 1996, Western Resources, Inc. on behalf of Kansas Gas and Electric Company (KG&E), tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Schedule No. 182. KG&E states the purpose of the change is to serve the City of Girard under Service Schedule SPP, Short-Term Participation Power Service effective July 1, 1996 through October 31, 1996.

Copies of the filing were served upon the City of Girard and the Kansas Corporation Commission.

Comment date: August 7, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER96–2461–000]

Take notice that on July 18, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Southern Company Services, Inc., solely as agent for Alabama Power Company, Georgia Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric and Power Company, collectively known as Southern Companies will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 1, 1996.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Illinois Power Company

[Docket No. ER96–2462–000]

Take notice that on July 18, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Pan Energy Power Services, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of July 15, 1996.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power

[Docket No. ER96–2463–000]

Take notice that on July 18, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 12 to add seven (7) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make

service available as of July 1, 1996, to PanEnergy Power Services, Inc. and as of July 17, 1996, to AIG Trading Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Delhi Energy Services, Inc., Niagara Mohawk Power Corporation, and Vastar Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER96–2464–000]

Take notice that on July 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Delmarva Power & Light Company (Delmarva). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transmission under which NYSEG will sell to Delmarva and Delmarva will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on July 19, 1996, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and Delmarva.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Dartmouth Power Associates Limited Partnership

[Docket No. ER96–2472–000]

Take notice that on July 19, 1996, Dartmouth Power Associates Limited Partnership, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, proposed changes in its FERC Electric Service Tariff No. 1 for sales to Commonwealth Electric Company. The proposed changes would clarify the interpretation of existing pricing provisions, allow short-term purchases from other sellers, and provide for additional sales to Commonwealth Electric Company during system emergency conditions.

The proposed changes were agreed upon in order to avoid future disputes and misunderstandings and to allow the mutually beneficial transactions referenced above to occur.

Copies of the filing were served upon Commonwealth Electric Company and the Massachusetts Department of Public Utilities.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Company

[Docket No. ER96–2473–000]

Take notice that on July 19, 1996, Portland General Electric Company (PGE), tendered for filing a Revision No. 3 to Exhibit D of the General Transfer Agreement between Bonneville Power Administration and PGE (FERC Electric Service Tariff Volume No. 72).

The BPA and PGE mutually agree to revise Exhibit D to the General Transfer Agreement to reflect changes in transfer charges at the Canby and Twilight Points of Delivery.

Copies of the filing have been served on the parties included in the filing letter.

Pursuant to 18 CFR 35.11, PGE respectfully requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow Revision No. 3 to Exhibit D of the GTA to become effective as of August 1, 1996.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. The Montana Power Company

[Docket No. ER96–2469–000]

Take notice that on July 19, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, Service Agreement with The Utility-Trade Corp. and Duke/Louis Dreyfus L.L.C. under FERC Electric Tariff, Second Revised Volume No. 1, a revised Index of Purchasers under said Tariff, and Certificate of Concurrences from The Utility-Trade Corp. and Duke/Louis Dreyfus L.L.C.

A copy of the filing was served upon The Utility-Trade Corp. and Duke/Louis Dreyfus L.L.C.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER96–2470–000]

Take notice that on July 19, 1996, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with AIG Trading Corporation (AIG) under the NU System Companies System Power Sales/ Exchange Tariff No. 6. On behalf of AIG, NUSCO has also filed a Certificate of Concurrence.

NUSCO states that a copy of this filing has been mailed to AIG.

NUSCO requests that the Service Agreement become effective sixty (60) days following the Commission's receipt of the filing.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER96–2471–000]

Take notice that on July 19, 1996, UtiliCorp United Inc. (UtiliCorp), tendered for filing a Contract dated July 12, 1996 (the Contract) between UtiliCorp and the United States Department of Energy, Western Area Power Administration (WAPA). Under the Contract, the WestPlains Energy division of UtiliCorp will be interconnected with WAPA at WAPA's Midway Substation in Colorado.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER96–2465–000]

Take notice that on July 18, 1996, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Companies), filed a Service Agreement between GPU and PanEnergy Power Services, Inc. (PAN) dated July 11, 1996. This Service Agreement specifies that PAN has agreed to the rates, terms and conditions of the GPU Companies' Energy Transmission Service Tariff accepted by the Commission on September 28, 1995, in Docket No. ER95–791–000 and designated as FERC Electric Tariff, Original Volume No. 3.

GPU requests a waiver of the Commission's notice requirements for good causes shown and an effective date July 11, 1996, for the Service Agreement. GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania and on PAN.

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. New York State Electric & Gas Corporation

[Docket No. ER96–2466–000]

Take notice that on July 18, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing tariffs and various agreements relating to the purchase of up to 32 MW of New York Power Authority (NYPA) Economic Development Power (EDP) for resale to eligible retail customers in NYSEG's service territory pursuant to tariff rates and terms (the EDPP Tariff) approved by the New York State Public Service Commission (NYPSC). NYSEG requests that the Commission disclaim jurisdiction over this filing. Alternatively, NYSEG requests a waiver of the Commission's notice requirements and the following effective dates:

Agreement/tariff	Requested effective date
NYSEG's EDPP Tariff	April 11, 1994.
EDP Settlement Agreement (as approved by NYPSC).	August 15, 1994.
NYSEG/NYPA EDP Agreements, as amended (including EDP Metering Agreement).	May 27, 1994.

Copies of the filing were served upon the NYPSC, NYPA, and Multiple Intervenors (on behalf of certain industrial customers served by NYSEG).

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. The Washington Water Power Company

[Docket No. ER96–2467–000]

Take notice that on July 18, 1996, The Washington Water Power Company (WWP), tendered for filing a Termination Agreement for The Intercompany Pool Agreement. WWP states that the intention of said Termination Agreement is to terminate The Intercompany Pool Agreement effective 2400 hours on October 31, 1996. Notices of Cancellation and Certificates of Concurrence were submitted for the filing parties which include:

Idaho Power Company
PacifiCorp
Portland General Electric Company
Puget Sound Power & Light Company
Sierra Pacific Power Company
The Montana Power Company
The Washington Water Power Company

Comment date: August 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19577 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Application To Grant an Easement to Crescent Resources, Inc. To Construct a Private Marina

July 26, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to Grant an Easement to Cresent Resources, Inc. to Construct a Private Marina.

b. *Project Name and No:* Catawba-Wateree Project, FERC Project No. 2232–328.

c. *Date Filed:* June 26, 1996.

d. *Applicant:* Duke Power Company.

e. *Location:* Iredell County, North Carolina. The Harbour at Pointe Subdivision on Lake Norman near Mooresville.

f. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006, (704) 382–5778.

h. *FERC Contact:* Brian Romanek, (202) 219–3076.

i. *Comment Date:* August 30, 1996.

j. *Description of the filing:* Application to grant an easement of 4.504 acres of project land to Cresent Resources Inc. to construct a private residential marina consisting of 191 floating boat slips. The proposed marina would provide access to the reservoir for residents of The Harbour at the Pointe Subdivision. The proposed marina facility would consist of an access ramp and a floating slip facility. The slips would be anchored by using self-driving piles.

k. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–19535 Filed 7–31–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

July 26, 1996.

SUMMARY: The Federal Communications, 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 proposed and/or continuing information collections, 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 Commissions 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.

DATES: Written comments should be submitted on or before September 3, 1996. 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 Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0069.

Title: Application for Commercial Radio Operator License.

Form No.: FCC 756.

Type of Review: Revision of an Existing Collection.

Respondents: Individuals and households.

Number of Respondents: 19,000.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 6,270 hours.

Total Annual Cost: $45 per respondent for renewal of a Marine Radio Operator Permit, GMDSS Radio Operator License, GMDSS Radio Maintainer License, GMDSS Radio Operator/ Maintainer License, or a First, Second or Third Class Radiotelegraph Operator Certificate Renewal. Requests for Duplicate/Replacement require a fee of $45.

Needs and Uses: Section 13.9 and 13.13 of FCC rules require this information collection to establish the identity of persons applying for radio operator licenses. The Commission is authorized under Section 303(1)(1) of the Communications Act to issue radio operator licenses to qualified persons. The form is being revised to allow a purpose of application block for modification. Modification is to be checked only if adding the Ship Radar Endorsement and/or Six Months Service Endorsement to their existing license. Applicants previously applied as purpose ''New'' to add these endorsements. In addition, a space has been added for the applicant to provide an Internet address. As a result of the Debt Collection Improvement Act of 1996, the FCC is required to collect the Taxpayer Identification Number. A space has been provided on the form for applicant's Social Security Number. This form only filed by individual applicants therefore, no reference is made to an Employee Identification Number (EIN).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19576 Filed 7–31–96; 8:45 am]

BILLING CODE 6712–01–P

Sunshine Act Meeting; Additional Item To Be Considered at Open Meeting, Thursday, August 1st

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, August 1, 1996, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

2—Common Carrier—Title: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers (CC Docket No. 95–185). Summary: The Commission will consider actions to implement Sections 251 and 252 enacted in the Telecommunications Act of 1996; actions regarding interconnection between local exchange carriers and commercial mobile radio service providers.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission July 29, 1996. Commissioners Hundt, Chairman; Quello, Ness and Chong voting to consider this item.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. at (202) 857–3800. Audio and Video Tapes of this meeting can be purchased from Telspan International at (301) 731–5355. This meeting can be viewed over George Mason University's ''Capitol Connection.'' For Information on this service call (703) 993–3100.

Dated: July 29, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–19660 Filed 7–30–96; 2:19 pm]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' NUMBER: 96–19022.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 1, 1996, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Final Audit Report—Republican Party of Dade County.

DATE AND TIME: Tuesday, August 6, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 8, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1996–30: Robert F. Bauer on behalf of the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee
Advisory Opinion 1996–32: Craig Engle on behalf of the National Republican Senatorial Committee
Electronic Filing of Reports By Political Committees; Draft Final Rule with Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–19745 Filed 7–30–96; 3:39 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011432–006
Title: Pacific Latin America Agreement
Parties:
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Synopsis: The proposed amendment expands the geographic scope of the Agreement to include all ports of Mexico and Central America. The parties have requested a shortened review period.

Agreement No.: 224–010806–005
Title: Port of Portland/Stevedoring Services of America, Inc. Management Agreement
Parties:
Port of Portland (''Port'')
Stevedoring Services of America, Inc.
Synopsis: The proposed amendment increases the crane maintenance fee to $5,000, clarifies the Port's responsibilities and specifies the use of only Cranes 371, 372 and 356.

Dated: July 26, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19527 Filed 7–31–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

New England Logistics Group Inc., 25 Adams Street, Braintree, MA 02184, Officers: Richard T. Sheridan, Jr., President; William F. Sheridan, Vice President

Korex Transport, Inc., 1145 West Walnut Street, Compton, CA 90220, Officer: Han Jong Choi, President

Kota Shipping Corp., 1325 NW 93 Ct., Suite B–108, Miami, FL 33172, Officer: Bogdan Koszarycz, President.

Dated: July 29, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–19612, Filed 7–31–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The company listed in this notice has applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The application listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Century Bancorp, Inc., Thomasville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Home Savings, Inc., SSB, Thomasville, North Carolina.

Board of Governors of the Federal Reserve System, July 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19553 Filed 7-31-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The company listed in this notice has given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Financial, Inc., Des Moines, Iowa, in the issuance and sale at retail of money orders having a face value of not more than $1 thousand through its existing subsidiaries, pursuant to § 225.25(b)(12) of the Board's Regulation Y. Norwest Financial will enter into a contract with Travelers Express, Inc., Minneapolis, Minnesota. Travelers Express would provide Norwest Financial with blank money order forms and the equipment necessary to process the money order sales. Norwest Financial would act as the agent of Travelers Express and sell money orders in exchange for a flat fee for each money order sold.

Board of Governors of the Federal Reserve System, July 26, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–19554 Filed 7-31-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 961–0053]

Fresenius AG; Fresenius USA, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Walnut Creek, California-based subsidiary of Fresenius AG to divest its Lewisberry, Pennsylvania hemodialysis concentrate plant to Di-Chem, Inc. The consent agreement settles antitrust concerns stemming from Fresenius' proposed acquisition of National Medical Care, Inc. (NMC) from W.R. Grace & Co. Fresenius is one of the world's leading producers of kidney dialysis equipment, and NMC is the largest dialysis services company in the United States. The draft complaint alleges that Fresenius' acquisition of NMC would produce a firm with a market share of approximately 45–50 percent of the hemodialysis concentrate market.

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., S–3627, Washington, DC 20850. (202) 326–2949.

Robert Tovsky, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, S–3627, Washington, DC 20850. (202) 326–2949.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition by Fresenius AG of National Medical Care, Inc. from W.R. Grace & Co., and it now appearing that Fresenius AG and Fresenius USA, Inc. (hereinafter sometimes referred to as ''proposed respondents'') are willing to enter into an agreement containing an order to divest certain assets, and to cease and desist from making certain acquisitions without providing advance written notification to the Commission, and providing for other relief:

It is Hereby agreed by and between proposed respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

i. Proposed respondent Fresenius AG is a corporation organized, existing and doing business under and by virtue of the laws of Germany with its office and principal place of business located at Borkenberg 14, 61440 Oberursel/Ts, Bad Homburg, Germany.

ii. Proposed respondent Fresenius USA, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Massachusetts with its principal place of business located at 2637 Shadelands Drive, Walnut Creek, California 94598.

iii. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

iv. Proposed respondents waive:

(1) Any further procedural steps;

(2) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(3) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(4) Any claim under the Equal Access to Justice Act.

5. Proposed respondents shall submit, within thirty (30) days of the date this agreement is signed by proposed respondents, an initial report signed by the proposed respondents setting forth in detail the manner in which the proposed respondents will comply with Paragraph II of the order when and if entered. Such report will not become part of the public record unless and until the accompanying order is made final by the Commission and the required divestiture accomplished.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. ''Respondents'' or ''Fresenius'' means Fresenius AG and Fresenius USA, Inc., their directors, officers, employees, agents and representatives, their predecessors, successors, and assigns; their subsidiaries, divisions, and groups and affiliates controlled by Fresenius, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; their domestic and foreign parents, and the subsidiaries, divisions, and groups and affiliates controlled by any other domestic or foreign parent, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. ''NMC'' means National Medical Care, Inc., its directors, officers, employees, agents and representatives, its predecessors, successors, and assigns; its subsidiaries, divisions, and groups and affiliates controlled by NMC, and the respective directors, officers, employees, agents, representatives, successors and assigns of each; its domestic and foreign parents, including W.R. Grace & Co., and the subsidiaries, divisions, and groups and affiliates controlled by any other domestic or foreign parent, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. ''Commission'' means the Federal Trade Commission.

D. ''NMC Acquisition'' means the acquisition by Fresenius AG of NMC that is the subject of an Agreement and Plan of Reorganization entered into on or about February 4, 1996.

E. ''Hemodialysis Concentrate'' means the acid portion of the dialysate solution used in hemodialysis treatment of End Stage Renal Disease to carry waste materials from the patient's blood during the treatment.

F. ''Assets and Businesses'' means assets, properties, businesses, and goodwill, tangible and intangible, including, without limitation, the following:

1. All plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property;

2. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, trademarks, patents and patent rights, inventions, trade secrets, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;

3. Raw material and finished product inventories and goods in process;

4. All right, title and interest in and to real property, together with appurtenances, licenses, and permits;

5. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (other than contracts in which Hemodialysis Concentrate is sold as part of a package of products), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All separately maintained, as well as relevant portions of not separately maintained, books, records and files; and

8. All items of prepaid expense.

G. ''Hemodialysis Business to Be Divested'' means the Fresenius Lewisberry, Pennsylvania Hemodialysis Manufacturing Facility, and any additional Fresenius Hemodialysis Concentrate Assets and Businesses (as defined) as are necessary to assure the Viability and Competitiveness of the Hemodialysis Business to Be Divested in the manufacture, marketing or distribution of Hemodialysis Concentrate.

H. ''Viability and Competitiveness'' means that the Hemodialysis Concentrate Business to Be Divested is capable of functioning independently and competitively in the Hemodialysis Concentrate business in substantially

the same manner achieved by Fresenius prior to the divestiture.

II

It is further ordered that:

A. Respondents shall, absolutely and in good faith, divest the Hemodialysis Business to Be Divested to Di-Chem, Inc. (''Di-Chem''), within 10 business days of either (i) the date this Order is made final, or (ii) the closing of the NMC Acquisition, whichever is later, pursuant to and in accordance with the May 17, 1996 agreement between Fresenius USA, Inc. and Di-Chem (''Divestiture Agreement''). If the terms of such Divestiture Agreement are changed or supplemented in any way, notice of such changes or supplementations must be provided to the Commission, and any material changes or supplementations may be made only with the prior approval of the Commission. In the event that the Divestiture Agreement is terminated through no fault of Respondents, Respondents shall divest the Hemodialysis Business to Be Divested within four (4) months of either (i) the date this Order is made final, or (ii) the closing of the NMC Acquisition, whichever is later, and Respondents shall also effect such additional arrangements so as to assure the Viability and Competitiveness of the Hemodialysis Business to Be Divested. Respondents shall divest the Hemodialysis Business to Be Divested to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the divestiture is to enable the acquirer to compete in the manufacture and sale of Hemodialysis Concentrate in the United States and to remedy the lessening of competition resulting from the NMC Acquisition as alleged in the Commission's Complaint.

B. Pending divestiture of the Hemodialysis Business to Be Divested, Respondents shall take such actions as are necessary to maintain the marketability, viability and competitiveness of the Hemodialysis Business to Be Divested, including, but not limited to, taking necessary steps to ensure that the Lewisberry plant is capable of, and has been approved for, commercial production, and to prevent destruction, removal, wasting, deterioration or impairment of the Hemodialysis Business to Be Divested, other than ordinary wear and tear.

III

It is further ordered that:

A. If Respondents have not divested the Hemodialysis Business to Be Divested within four (4) months of either (i) the date this Order becomes final, or (ii) the closing of the NMC Acquisition, whichever is later, the Commission may appoint a trustee to divest the Hemodialysis Business to Be Divested pursuant to Paragraph II of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order. The Commission shall select the trustee under this Paragraph, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, divestitures, and licensing. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission and consistent with the provisions of Paragraph II of this Order, the trustee shall have the exclusive power and authority to divest the Hemodialysis Business to Be Divested.

2. Within ten (10) days after the appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, and in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

3. The trustee shall have twelve (12) months from the date the trust agreement described in this Paragraph III.B is approved by the Commission to accomplish the divestiture of the Hemodialysis Business to Be Divested, which shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court.

4. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Hemodialysis Business to Be Divested and to any other relevant information as the trustee may reasonably request. Respondents shall develop such financial or other information as the trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

5. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set out in Paragraph II of this Order; provided however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

6. The trustee shall serve without bond or other security at the cost and expense of Respondents, and on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies

shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Hemodialysis Business to Be Divested.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the trustee, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

9. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

10. The trustee shall have no obligation or authority to operate or maintain the Hemodialysis Business to Be Divested.

11. The trustee shall report in writing to Respondents and the Commission every thirty (30) days concerning efforts to accomplish the divestiture.

IV

It is further ordered that:

A. Within twenty (20) days after the date this Order becomes final and every thirty (30) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

V

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Respondents shall cease and desist from acquiring, without Prior Notification to the Commission (as defined below), directly or indirectly, through subsidiaries or otherwise, any assets for manufacturing Hemodialysis Concentrate or any Hemodialysis Concentrate manufacturing facility, that have been employed in Hemodialysis Concentrate manufacturing in the United States within one (1) year of the date of an offer by Fresenius to purchase the assets, or any interest in a Hemodialysis Concentrate manufacturing facility in the United States, or any interest in any individual, firm, partnership, corporation or other legal or business entity that directly or indirectly owns or operates a Hemodialysis Concentrate manufacturing facility in the United States. Provided, however, that this Paragraph V shall not be deemed to require Prior Notification to the Commission for (i) the construction of new facilities by Fresenius, (ii) the acquisition of new or used equipment in the ordinary course of business from a person other than the acquirer of the Hemodialysis Business to Be Divested, or any other present producer of Hemodialysis Concentrate; or (iii) the purchase or lease by Fresenius of a facility that has not been operated as a Hemodialysis Concentrate manufacturing facility at any time during the year immediately prior to the purchase or lease by Fresenius.

''Prior Notification to the Commission'' required by Paragraph V shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as ''the Notification Form''), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Fresenius and not of any other party to the transaction. Fresenius shall provide the Notification Form to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the ''first waiting period''). If, within the first waiting period, representatives of the Commission make a written request for additional information, Fresenius shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, Fresenius shall not be required to provide Prior Notification to the Commission pursuant to this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VI

It is further ordered that until the obligations set forth in Paragraphs II, III and V are met, Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporations that may affect compliance obligations arising out of the Order.

VII

It is further ordered that Respondents, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five days notice to Respondents, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Without restraint or interference from Respondents, to interview Respondents' officers, directors, or employees, who may have counsel present, regarding such matters.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted for public comment, from Fresenius AG and Fresenius USA, Inc., an agreement containing a consent order. This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisition by Fresenius of the businesses of W.R. Grace & Co. that comprise National Medical Care, Inc. (''NMC''). The Commission's proposed complaint alleges that Fresenius and NMC compete with each other in hemodialysis concentrate, a chemical solution that is necessary in hemodialysis treatment of patients with End Stage Renal Disease, or chronic kidney failure.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the production and sale of hemodialysis concentrate. The Commission has reason to believe that the acquisition agreement violates Section 5 of the Federal Trade Commission Act and the acquisition would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act if consummated, unless an effective remedy eliminates such anticompetitive effects.

The Commission's Complaint alleges that hemodialysis concentrate is a necessary product in hemodialysis treatment, and that the use of this product would not be significantly affected by a price increase. The Complaint further alleges that imports of hemodialysis concentrate are small and, because of high shipping costs, would not be responsive to a price increase in the United States. The market for hemodialysis concentrate in the United States is highly concentrated. In addition, the entry of other producers is unlikely. The Commission's Complaint alleges that the proposed acquisition would lessen competition by eliminating competition between Fresenius and NMC, and would make more likely coordinated interaction among the remaining producers of hemodialysis concentrate, leading to higher prices. Company planning documents, in fact, project that ''increased consolidation'' among concentrate producers will lead to ''stabilization'' of prices.

The proposed order accepted for public comment requires Fresenius to divest its Lewisberry, Pennsylvania concentrate manufacturing plant to Di-Chem, Inc. (''Di-Chem''), along with other assets. The purpose of the proposed divestiture is to create a viable and competitive producer of hemodialysis concentrate and thereby to remedy the lessening of competition alleged in the complaint. Di-Chem already manufactures and markets other dialysis products. In addition, Di-Chem's management has substantial experience in the hemodialysis concentrate business and in other products used in hemodialysis. Public comments regarding all aspects of the proposed divestiture to Di-Chem will be considered along with other comments on the proposed order.

Under the terms of the proposed order, Fresenius must divest the Lewisberry plant to Di- Chem within ten (10) days after the proposed Order is made final by the Commission. If the divestiture to Di-Chem is not accomplished, then Fresenius must divest the Lewisberry plant within four (4) months to an acquirer that is approved by the Commission. If Fresenius fails to accomplish the divestiture, then the Commission may appoint a trustee to divest the Lewisberry plant, along with ancillary assets or other arrangements that may be necessary to assure that the Lewisberry plant is capable of being operated independently and competitively by its acquirer. The proposed order also requires that Fresenius provide prior notice to the Commission of future acquisitions of either assets used to manufacture hemodialysis concentrate or companies that produce hemodialysis concentrate.

The purpose of this analysis is to invite public comment concerning the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Roscoe B. Starek, III

In the Matter of Fresenius AG, et al., File No. 961 0053.

I cannot join in the Commission's decision to accept a consent agreement for public comment in this matter. The evidence accumulated in the investigation is not sufficient to give rise to reason to believe that respondents' acquisition of National Medical Care, Inc. (''NMC'') from W.R. Grace & Co. is likely to lessen competition substantially in a United States market for hemodialysis concentrate (''HD concentrate'').

HD concentrate consists of various salts (sodium chloride, magnesium chloride, calcium chloride, and potassium chloride) and dextrose in purified water, with sodium bicarbonate (i.e., baking soda) added at a later stage. Because this easily formulated mixture does not enter the body and therefore is not a ''drug'' for purposes of Food and Drug Administration (''FDA'') regulation, the FDA applies to HD concentrate the somewhat more lenient regulations applicable to medical devices. Regulatory delay thus does not significantly constrain entry by new firms or expansion by incumbents.

The investigation revealed that various producers of HD concentrate—including Fresenius itself—entered quickly and easily into the manufacture of the product, and some stated that they could inexpensively increase their capacity to make HD concentrate by as much as 60 percent within 30 days, without substantial investment or the need for additional FDA approval.[1] These indicia of cheap and simple entry and expansion may explain why the delivered price of HD concentrate has fallen continuously since the product first became available.[2]

Thus, any assessment of this acquisition's potential to increase concentration in the market for HD concentrate—and in turn make likelier an exercise of market power—must take into account several strongly mitigating factors, including approximately 40 percent current excess capacity, the aforementioned ability of manufacturers to expand capacity speedily and at minimal cost, and the evident ability of customers (hemodialysis clinics) to integrate into the manufacture of HD concentrate in the event concentrate producers behave anticompetitively. Certain customers that speculated that the acquisition might lead to higher prices for HD concentrate appear to have been unaware of current plans for significant entry or capacity expansion by firms other than Fresenius and NMC. Moreover, other customer complaints

[1] Given the contrast between the time required for entry in the United States and that required in Germany, it is perhaps unsurprising that the latter nation's Bundeskartellamt concluded that Fresenius' acquisition of a competitor in HD concentrate would have anticompetitive effects. Entry into the German HD concentrate business apparently takes three to five years. In the United States, entry requires around nine months.

[2] It is difficult to accept the proposition that ''[m]ost of the investment in production would likely be sunk in the event that entry were unsuccessful'' (proposed complaint, ¶ 13). The equipment used in the manufacture of HD concentrate appears to be adaptable to alternate uses, and indeed there is evidence of firms planning to convert some HD concentrate facilities to other purposes.

seem to have been motivated by a fear that the vertical integration of Fresenius (a manufacturer of kidney dialysis products) and NMC (an operator of hemodialysis treatment centers, among its other businesses) could make the merged firm a stronger competitor in dialysis treatment.

It is always tempting to accept the ''bird in the hand'' represented by a consent agreement proffered in the early stages of an investigation, such as the one entered into (apparently without significant resistance) by Fresenius. Nevertheless, when the evidence on entry, expansion, and the absence of anticompetitive effects is as clear as in this case, the issuance of a consent order is unwarranted.

I therefore dissent.

[FR Doc. 96–19594 Filed 7–31–96; 8:45 am]
BILLING CODE 6750–01–P

[File No. 901–0061]

Hale Products, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Conshohocken, Pennsylvania-based manufacturer of fire pumps for fire trucks from entering into, continuing, or enforcing any requirement that fire truck manufacturers refrain from purchasing mid-ship mounted fire pumps from any company, or that they purchase or sell only Hale's pumps. The consent agreement settles allegations that Hale and Waterous Company, Inc., which together account for 90 percent of the market, sold their pumps on an exclusive basis to fire truck manufacturers and that this arrangement allowed the two companies to allocate the customers each would serve and made it more difficult for other pump makers to enter the market.

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, H–374, Washington, DC 20850. (202) 326–2932. Mark Whitener, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, H–374, Washington, DC 20850. (202) 326–2845.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission (''Commission'') having initiated an investigation of certain acts and practices of Hale Products, Inc., (sometimes referred to as ''Proposed Respondent'' or ''Hale Products''), and it now appearing that Proposed Respondent is willing to enter into an Agreement containing an Order to Cease and Desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Proposed Respondent, by its duly authorized officers, and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Hale Products Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Its principal place of business is 700 Spring Mill Avenue, Conshohocken, Pennsylvania 19248.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's addresses as stated in this agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

(a) ''Respondent Hale Products'' means (1) Hale Products, Inc.; (2) its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Hale Products, Inc., and their successors and assigns; (3) all companies or entities that any parent of Hale Products, Inc., creates in the future and that engage in the manufacture or sale of Mid-Ship Mounted Fire Pumps, or Hale's parent if it engages in the manufacture or sale of Mid-Ship Mounted Fire Pumps; (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(b) ''Mid-Ship Mounted Fire Pumps'' are truck mounted fire pumps that meet the National Fire Protection Association Standard for Pumper Fire Apparatus known as ''NFPA 1901.''

(c) ''Commission'' means the Federal Trade Commission.

(d) ''OEM's'' are original equipment manufacturers who buy and install Mid-Ship Mounted Fire Pumps, as well as many other components, into a final fire truck. OEM's then sell the trucks to fire departments in the United States.

II

It is further ordered that Respondent Hale Products, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the offering for sale or sale of any Mid-Ship Mounted Fire Pump in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, does forthwith cease and desist from entering into, continuing, or enforcing any condition, agreement or understanding with any OEM that such OEM will refrain from the purchase or sale of Mid-Ship Mounted Fire Pumps of any manufacturer, or will purchase or sell Mid-Ship Mounted Fire Pumps of only Respondent Hale Products; provided however, that nothing in this Order shall prohibit any price differentials that make only due allowance for differentials in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which Mid- Ship Mounted Fire Pumps are sold or delivered, or that are otherwise lawful under the provisions of the Robinson-Patman Act, 15 U.S.C. § 13.

III

It is further ordered that Respondent Hale Products shall provide a copy of this Order with the complaint, and a copy of the notice set out in Appendix A:

(a) within thirty (30) days after the date this Order becomes final, one notice to each OEM to whom it sold a Mid-Ship Mounted Fire Pump at any time during the two (2) years prior to the date this order becomes final; and

(b) for a period of three (3) years after the date this Order becomes final, to each OEM not covered by sub-paragraph (a) above to whom it provides a price list for or a price quotation on a Mid-Ship Mounted Fire Pump. Such notice shall accompany the price list or price quotation, or in the case of telephone quotations shall be delivered as soon as practical after such quotation, and need only be provided once to each OEM not covered by sub-paragraph (a) above.

IV

It is further ordered that Respondent Hale Products shall file with the Commission within sixty (60) days after the date this order becomes final, and annually on the anniversary of the date this order becomes final for each of the three (3) years thereafter, a report, in writing, signed by the Respondent, setting forth in detail the manner and form in which it has complied and is complying with this order.

V

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order. Such notification shall be at least thirty (30) days in cases not subject to the notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and at least ten (10) days in the case of transactions subject to the notification provisions of the Hart-Scott-Rodino Act.

VI

It is further ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix A

[Hale Products' Letterhead]

PLEASE READ THIS

Enclosed with this notice is a copy of a Consent Order agreed to between the Federal Trade Commission and Hale Products, Inc. In the Order, Hale has agreed that it will not refuse to sell, or refuse to contract to sell, Mid-Ship Mounted Fire Pumps on the grounds that an OEM refuses to sell Hale pumps exclusively. The Order does not prohibit OEMs from purchasing only Hale Mid-Ship Mounted Fire Pumps if, in the OEM's sole discretion, it deems it advisable. Moreover, Hale retains the right to refuse to sell Mid-Ship Mounted Fire Pumps to any OEM for lawful reasons. The Type of Pump You Use is Your Business, and You Are Free to Offer and Install Competing Pumps as Alternatives to Hale Pumps.

* * * * *

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order, subject to final approval, from Hale Products, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance along with the proposed order alleges that the proposed respondent violated Section 5 of the Federal Trade Commission Act by maintaining exclusive dealing arrangements with its customers—manufacturers of municipal fire trucks.

The complaint alleges that respondent Hale Products and Waterous Company are the two largest manufacturers of mid-ship mounted fire pumps (''fire pumps'') sold in the United States. Together, respondent Hale Products and Waterous account for close to or more than ninety (90) percent of the fire pump market in the United States. Except to the extent that competition has been restrained as alleged in the complaint, respondent Hale Products and Waterous have been and are now in competition among themselves and with other fire pump manufacturers in the United States.

The complaint alleges that, for over fifty (50) years and until approximately 1991, both respondent Hale Products and Waterous maintained exclusive dealing arrangements. Each sold fire pumps to its customers on the condition or understanding that such customers would deal in its pumps exclusively, or that such customers would refrain from buying and selling pumps made by the

other. The complaint, and a companion complaint against Waterous, further allege that both companies believed that continued exclusive dealing by the two companies would tend to exclude competitors from the market, and that continued exclusive dealing, if maintained by both companies, would tend to reduce competition between them over price and over non-price terms, such as quality differences and delivery times. Consequently, both continued to maintain and to enforce exclusive dealing policies.

The complaint alleges that, under these circumstances, respondent's exclusive dealing agreements violated Section 5 of the Federal Trade Commission Act. Specifically, the complaint alleges that exclusive dealing substantially reduced competition in the sale and marketing of fire pumps by facilitating an allocation of customers between respondent Hale and Waterous, and by excluding or tending to exclude other actual or potential manufacturers of fire pumps from the market. Facilitating coordinated interaction, and raising entry barriers that exclude competition, are two ways that exclusive dealing restraints can be anticompetitive. *See Beltone Electronics Corp.*, 100 F.T.C. 68, 207 (1982).

The Proposed Consent Order

The proposed consent order would prohibit respondent Hale Products from entering into, continuing, or enforcing any condition, agreement, or understanding with any fire truck manufacturer that such manufacturer will refrain from the purchase or sale of any other manufacturer's fire pumps. The proposed order, however, would allow certain lawful discounts such as volume discounts that do not run afoul of the provisions of the Robinson-Patman Act.

The proposed consent order would also require respondent Hale Products to notify its customers of the terms of the order. Specifically, the proposed consent would require respondent Hale Products to send a copy of the order to each fire truck manufacturer it sold a pump to during the two (2) years prior to the entry of the order; for three (3) years after the order is entered, respondent Hale Products must send a copy of the order to each new customer to whom it provides a price list or a price quotation. The order would also require notification to such customers that respondent will not restrict the brand of pumps they may use.

The proposed consent order would also require respondent Hale Products to file with the Commission compliance reports setting forth the manner in which it has complied and is complying with the terms of the order. Such reports are due within sixty (60) days after the order becomes final, and for three (3) years annually on the anniversary of the date the order becomes final. Respondent Hale Products must also notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation. In cases subject to the provisions of the Hart-Scott-Rodino Act, however, such prior notification may be made at least ten (10) days prior to the proposed change. Finally, the proposed consent provides that the order will terminate automatically twenty (20) years after the date it becomes final.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Chairman Pitofsky, and Commissioners Varney and Steiger

In the Matter of Waterous Company, Inc./ Hale Products, Inc. File No. 901–0061.

We write separately to respond to some of the concerns raised in Commissioner Starek's dissent.

First, we cannot concur with Commissioner Starek's suggestion that, for customer allocation of a component product to work, the participants must be able to allocate the ultimate customers of the finished product (p.1). There will be situations where downstream competition will undermine a customer allocation scheme of a component of a final good. For example, that might be the case where the component is a significant part of the cost of the final product, or where the ultimate consumers have a much stronger preference for the component than the ultimate good.

None of those conditions was present in this case. Fire truck buyers make purchase decisions primarily on the basis of truck brand, the pump price is only a small part of the final purchase price, and pump features are only a small part of the entire truck package. Evidence of relatively high profits at the component level supports this interpretation.

Second, Commissioner Starek suggests that these exclusive dealing arrangements would not increase the likelihood of successful collusion because of the difficulty of detecting cheating. (p.2) We agree that maintaining collusion requires the ability to detect and discipline cheating. But here that methodology was simple: if a fire engine manufacturer used an alternative pump it would be readily identified. Moreover, the fact that the customer allocation through exclusive dealing was maintained over almost five decades suggests that there was an effective method for enforcing the exclusive dealing arrangements.

Third, Commissioner Starek observes that instability at the truck manufacturing stage (i.e., changes in market share) may lead to the demise of any customer allocation agreement with respect to a component. We agree that might be the case where a very large portion of a pump manufacturer's sales were tied to a single truck manufacturer. Here, however, the arrangements were durable; the fact is that instability among truck manufacturers did not deter the effectiveness of these agreements.

Finally, Commissioner Starek suggests that the arrangements did not foreclose new entry because they were not really exclusive. He relies on the fact that some OEMs were willing to install the pumps of a third manufacturer at customers' request. (p.3) The fact that the exclusive policy was not perfect and that some truck manufacturers may have offered the pumps of a third pump manufacturer, accounting for a very small share of pump sales, did not have a significant effect on competition at the pump level. The key to competition in this market was the competitive positions of Hale and Waterous, which together account for more than 90% of the market. The evidence establishes that Hale and Waterous understood that as long as both firms maintained the exclusive dealing arrangements, competition between them would be diminished, prices would be higher and entry would be more difficult. That is in fact how things worked in this industry for several decades, and those are the anticompetitive effects that the Commission's orders are intended to address.

Dissenting Statement of Commissioner Mary L. Azcuenaga

In the Matter of Waterous Company, Inc./ Hale Products, Inc., File No. 901–0061.

I generally endorse the views expressed by Commissioner Starek in his dissenting statement. The evidence does not in my view suggest a market in which competition has been unlawfully restrained, and I do not find

reason to believe that the law has been violated.

Dissenting Statement of Commissioner Roscoe B. Starek, III

In the Matter of Waterous Company, Inc./ Hale Products, Inc. File No. 901 0061.

I respectfully dissent from the Commission's decision to accept consent agreements with Waterous Company, Inc., and Hale Products, Inc., two producers of midship-mounted pumps for fire trucks. The proposed complaints claim anticompetitive effects arising from alleged exclusive dealing arrangements between each proposed respondent and its direct customers, the original equipment manufacturers of fire trucks (''OEMs''), in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. section 45. I am unpersuaded that the arrangements between proposed respondents and their customers can be characterized accurately as ''exclusive.'' More important, however, there is no sound theoretical or empirical basis for believing that these relationships, even if exclusive, harmed competition; in fact, there are good reasons to believe the contrary. In any event, even if one assumes arguendo the validity of the theories of anticompetitive effects, the proposed orders are unlikely to remedy those alleged effects.

The complaints allege, inter alia, that the arrangements between Waterous, Hale, and their OEM customers reduce competition in two ways—by facilitating an allocation of customers between Waterous and Hale, and by creating a barrier to the entry of new pump manufacturers. The first theory posits that Waterous and Hale wish to set the prices of their fire pumps collusively but find themselves unable to reach and maintain a direct agreement on price. Under this hypothesis, in order to achieve collusive pricing without a direct agreement on prices, Waterous and Hale have entered into a de facto agreement to allocate fire truck OEMs between themselves. That agreement, combined with an agreement not to bid for each other's OEM business, makes each pump maker a monopolist with respect to its OEMs. As monopolists, it is argued, the pump manufacturers are able to set supracompetitive prices.

This theory is fatally flawed. For a customer allocation scheme to allow Waterous and Hale to set supracompetitive prices, it necessarily must entail the allocation of the final customers—the fire departments—between the two pump makers. Absent such an allocation, an exclusive dealing contract between a pump maker and one or more OEMs—or even outright vertical integration between the pump producer and one or more OEMs—does not allow the pump producer to raise prices anticompetitively. Under the Commission's theory of competitive harm, Waterous and Hale ''allocate customers'' in lieu of trying to enter into direct pump price agreements that presumably would break down under each party's incentives to undercut the collusive price. In other words, the pump makers' ''customer allocation'' scheme solves this instability problem. However, unless Waterous and Hale also agree not to compete against one another for the patronage of the fire departments—i.e., unless they collusively allocate fire departments between themselves—each pump maker retains its incentive to take business from its rival through price cuts. Absent allocation of fire department customers, one should expect the same sort of ''cheating,'' with the equivalent competitive result, that the Commission believes frustrated direct collusion between Waterous and Hale.[1]

Thus, it is implausible that ''exclusive dealing'' arrangements between the proposed respondents and their OEMs increase the likelihood of successful collusion between Waterous and Hale. Indeed, there are compelling reasons why such an arrangement might actually reduce this likelihood. Maintaining collusion requires the reasonably accurate identification and punishment of cheating.[2] If Waterous and Hale bid directly and repeatedly for OEM business, cheating might be inferable from one firm's loss of a pump sale to its rival. On the other hand, when Waterous and Hale compete indirectly—i.e., when, as here, their affiliated OEMs submit bids to a fire department incorporating not merely the pump price but rather the prices of all of the truck's components—it will be more difficult for a pump maker to determine whether a loss of business is attributable to price-cutting by the rival pump maker or to reductions in the prices of other components.[3]

The difficulty of maintaining coordination is exacerbated if there is substantial market share volatility among the affiliated customers for reasons unrelated to the pumps. Such volatility makes it difficult for a pump maker to infer whether a sales loss stems from secret pump price concessions or from some other cause. Moreover, if the fortunes of buyers (here, fire truck OEMs) are expected to differ over time—some flagging, others flourishing—the utility of customer allocation as a long-run aid to collusion appears questionable. The pump producer with the misfortune to have affiliated with unsuccessful buyers will have still greater incentives to depart from the collusive scheme. In this regard, the fire truck OEM market witnessed substantial turnover during the period in which the allegedly exclusive agreements were in force.[4] Thus, even if one could overcome the defect in the Commission's collusive theory, these other factors would continue to cast substantial doubt upon this theory's applicability.[5]

The Commission's second theory of harm alleges that exclusive arrangements between pump makers and OEMs have created a barrier to the entry of new pump manufacturers, thereby allowing the incumbent pump sellers to set and maintain supracompetitive prices. Although the vertical section of the 1984 Merger

[1] The majority's assertion that pump prices and pump brands are relatively unimportant to final consumers (i.e., fire departments) is inconsistent with the events that triggered this investigation—namely, complaints from OEMs that they suffered significant competitive harm from their alleged inability to offer multiple pump brands. It is hard to reconcile those complaints with the majority's claimed end-user indifference to pump brands.

[2] See, e.g., Stigler, ''A Theory of Oligopoly,'' 72 J. Pol. Econ. 44 (1964), reprinted in THE ORGANIZATION OF INDUSTRY, ch. 5 (1968).

[3] The majority appears to have misunderstood my point with regard to the detection of cheating. By ''cheating,'' I am not referring to an effort by, say, Hale to sell to Waterous OEMs (or vice-versa). Rather, I refer to Hale's hidden reduction in pump prices to its own customers, which consequently allows those customers to take business from OEMs affiliated with the rival pump brand. This form of cheating is extremely difficult to detect, because an OEM's capture of sales from a rival OEM could be attributable to many reasons other than a reduced pump price.

[4] For example, just since 1990, at least four major OEMs—Grumman, Mack, FMC, and Beck—have exited the market. This period also witnessed entry by such OEMs as Firewolf and Becker. As discussed below, substantial entry into and exit from the OEM market also bear on the applicability of the proposed complaints' second theory of competitive harm (entry deterrence).

[5] With regard to the pump makers' ostensibly high accounting profits, antitrust economists no longer consider accounting profits as a reliable indicator of high economic profits (which can themselves be as consistent with superior efficiency as with collusion). Fisher and McGowan, ''On the Misuse of Accounting Rates of Return to Infer Monopoly Profits,'' 73 Am. Econ. Rev. 82 (1983). Moreover, concerning the longevity of the arrangements between pump makers and OEMs, that factor testifies only to their profitability; it does not distinguish between anticompetitive and procompetitive (or competitively neutral) explanations for their use. Indeed, the asserted instability of OEMs' market shares lends greater credence to an efficiency explanation: one would not expect the parties to an efficient exclusive dealing arrangement to abandon it simply because a customer loses market share, while (as I have explained above) the same cannot be said of an anticompetitive arrangement.

Guidelines[6] is not cited explicitly, the theory here appears to have been drawn from those Guidelines. That analysis focuses on a market in which, but for ease of entry, conditions are favorable to the exercise of market power, and asks whether a vertical merger (or, in the current case, vertical integration through contract) might reduce entry so that market power could be exercised.[7]

Although this effect might occur in some settings, in this case I find the evidence to support invoking this theory tenuous at best. The Commission's complaints apparently rest on the difficulty allegedly experienced by another pump maker in obtaining the patronage of OEMs.[8] An alternative explanation for that firm's failure to achieve a larger market share is that fire departments find its pumps significantly less attractive than those of Hale and Waterous for reasons unrelated to the pump makers' distribution policies. The evidence adduced by the staff is far from sufficient to establish that this firm, or any other actual or potential competitor, was anticompetitively excluded from selling pumps to OEMs.[9]

In addition to the weaknesses in the anticompetitive theories outlined above, a factual problem plagues this case: evidence gathered in the investigation calls into question whether Waterous's and Hale's relationships with their respective OEM customers can even be characterized as ''exclusive.'' Although many OEMs have tended to deal principally with only one pump maker—a fact, I note in passing, that is as consistent with an efficiency rationale for exclusivity as it is with an anticompetitive theory—several larger OEMs affiliated with Waterous and Hale have expressed a willingness to install another manufacturer's pumps at customers' request. Indeed, several OEMs—including at least one of the largest ones affiliated with Hale—have installed another competitor's pumps, and this investigation produced no evidence to suggest that any dealer was terminated for selling that firm's pumps. In any case, however, even if OEM exclusivity could be convincingly demonstrated, it should be clear from the discussion above that a great deal more is required to prove that the exclusive arrangements had anticompetitive effects.[10] The evidence on the competitive effects of existing arrangements between pump makers and OEMs is as consistent with the view that the arrangements induce greater efficiency in the production and marketing of pumps as it is with a market power theory.

I am therefore unpersuaded that respondents' distribution policies have harmed competition in any relevant market. Even had I concluded otherwise, however, I would not endorse the proposed consent orders, which require each respondent to cease and desist from requiring OEM exclusivity as a condition of sale. As I have noted elsewhere,[11] the problems with remedies of this sort are significant.[12] A formal ban on exclusive dealing accomplishes little if respondents have alternative means available to achieve the same end. One readily available method in this case, fully consistent with the terms of the proposed orders, would be to establish a set of quantity discounts providing a customer with substantial financial incentives to procure all of its pumps from a single seller. Moreover, nothing in the orders would prevent a pump manufacturer from unilaterally refusing to sell to an OEM so long as the refusal was not conditioned on a promise of exclusivity. Another possible method would be to give exclusive OEMs better service (e.g., faster delivery times) than their non-exclusive rivals receive.

I cannot endorse an ineffective remedy for a nonexistent harm.

[FR Doc. 96–19593 Filed 7–31–96; 8:45 am]

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[6] U.S. Department of Justice, Merger Guidelines, § 4.2 (1984), 4 Trade Reg. Rep. (CCH) ¶13,103.

[7] The 1984 Merger Guidelines (§ 4.21) identify three necessary but not sufficient conditions for this problem to exist. First, the market in which power would be exercised (the ''primary'' market) must be sufficiently conducive to anticompetitive behavior that the impact of vertical integration in reducing entry would allow such behavior to occur. Second, the degree of vertical integration subsequent to the merger must be so extensive that an entrant into the primary market would also have to enter the other market (the ''secondary'' market). If substantial unintegrated capacity remains in the secondary market after the vertical merger, it is less likely that the merger will facilitate an anticompetitive outcome. Third, the requirement that a firm enter both the primary and secondary markets—rather than just the primary market—must make entry into the primary market significantly more difficult and therefore less likely to occur. 4 Trade Reg. Rep. (CCH) ¶13,103 at 20,565–66; see also Blair and Kaserman, LAW AND ECONOMICS OF VERTICAL INTEGRATION AND CONTROL 152 (1983).

[8] The evidence supporting the Commission's entry-deterrence theory appears to consist of that producer's experience in trying to erode OEMs' preferences for Waterous and Hale pumps.

[9] The majority's assertion with respect to the entry-deterring effects of the arrangements is simply that—an assertion. All of the evidence gathered in this investigation is easily reconciled with an efficiency rationale for the challenged arrangements between pump makers and OEMs. In this market, as in any other, superior efficiency on the part of incumbents is a powerful entry deterrent. It is not an antitrust violation.

[10] *Cf. Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 58–59 (1977) (plaintiff must demonstrate anticompetitive effects and defendant's market power when challenging vertical restraints).

[11] Dissenting Statement of Commissioner Roscoe B. Starek, III, in Silicon Graphics, Inc., Docket No. C–3626.

[12] For a discussion of why nondiscrimination remedies are problematic, see Brennan, ''Why regulated firms should be kept out of unregulated markets: understanding the divestiture in *United States* v. *AT&T*,'' *32 Antitrust Bull.* 741 (1987).

[File No. 901–0061]

Waterous Company, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the St. Paul-based manufacturer of fire pumps for fire trucks from entering into, continuing, or enforcing any requirement that fire truck manufacturers refrain from purchasing mid-ship mounted fire pumps from any company, or that they purchase or sell only Waterous's pumps. The consent agreement settles allegations that Waterous and Hale Products, Inc., which together account for 90 percent of the market, sold their pumps on an exclusive basis to fire truck manufacturers and that this arrangement allowed the two companies to allocate the customers each would serve and made it more difficult for other pump makers to enter the market.

DATES: Comments must be received on or before September 30, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, H–374, Washington, DC 20850. (202) 326–2932. Mark Whitener, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, H–374, Washington, DC 20850. (202) 326–2845.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is

invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b) (6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b) (6) (ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission (''Commission'') having initiated an investigation of certain acts and practices of Waterous Company, Inc., (sometimes referred to as ''Proposed Respondent'' or ''Waterous''), and it now appearing that Proposed Respondent is willing to enter into an Agreement containing an Order to Cease and Desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Proposed Respondent, by its duly authorized officers, and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Waterous Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota. Its principal place of business is 300 John E. Carroll Avenue East, South Saint Paul, Minnesota 55075.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's addresses as stated in this agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that, as used in this Order, the following definitions shall apply:

(a) ''Respondent Waterous'' means (1) Waterous Company, Inc.; (2) its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Waterous Company, Inc., and their successors and assigns; (3) all companies or entities that any parent of Waterous Company, Inc., creates in the future and that engage in the manufacture or sale of Mid-Ship Mounted Fire Pumps, or Waterous' parent if it engages in the manufacture or sale of Mid-Ship Mounted Fire Pumps; (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(b) ''Mid-Ship Mounted Fire Pumps'' are truck mounted fire pumps that meet the National Fire Protection Association Standard for Pumper Fire Apparatus known as ''NFPA 1901.''

(c) ''Commission'' means the Federal Trade Commission.

(d) ''OEM's'' are original equipment manufacturers who buy and install Mid-Ship Mounted Fire Pumps, as well as many other components, into a final fire truck. OEM's then sell the trucks to fire departments in the United States.

II

It Is Further Ordered that Respondent Waterous, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the offering for sale or sale of any Mid-Ship Mounted Fire Pump in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, does forthwith cease and desist from entering into, continuing, or enforcing any condition, agreement or understanding with any OEM that such OEM will refrain from the purchase or sale of Mid-Ship Mounted Fire Pumps of any manufacturer, or will purchase or sell Mid-Ship Mounted Fire Pumps of only Respondent Waterous; provided however, that nothing in this Order shall prohibit any price differentials that make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which Mid-Ship Mounted Fire Pumps are sold or delivered, or that are otherwise lawful under the provisions of the Robinson-Patman Act, 15 U.S.C. § 13.

III

It Is Further Ordered that Respondent Waterous shall provide a copy of this Order with the complaint, and a copy of the notice set out in Appendix A:

(a) within thirty (30) days after the date this Order becomes final, one notice to each OEM to whom it sold a Mid-Ship Mounted Fire Pump at any time during the two (2) years prior to the date this order becomes final; and

(b) for a period of three (3) years after the date this Order becomes final, to each OEM not covered by sub-paragraph (a) above to whom it provides a price

list for or a price quotation on a Mid-Ship Mounted Fire Pump. Such notice shall accompany the price list or price quotation, or in the case of telephone quotations shall be delivered as soon as practical after such quotation, and need only be provided once to each OEM not covered by sub-paragraph (a) above.

IV

It Is Further Ordered that Respondent Waterous shall file with the Commission within sixty (60) days after the date this order becomes final, and annually on the anniversary of the date this order becomes final for each of the three (3) years thereafter, a report, in writing, signed by the Respondent, setting forth in detail the manner and form in which it has complied and is complying with this order.

V

It Is Further Ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order. Such notification shall be at least thirty (30) days in cases not subject to the notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and at least ten (10) days in the case of transactions subject to the notification provisions of the Hart-Scott-Rodino Act.

VI

It Is Further Ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix A

[Waterous' Letterhead]

PLEASE READ THIS

Enclosed with this notice is a copy of a Consent Order agreed to between the Federal Trade Commission and Waterous Company, Inc. In the Order, Waterous has agreed that it will not refuse to sell, or refuse to contract to sell, Mid-Ship Mounted Fire Pumps on the grounds that an OEM refuses to sell Waterous pumps exclusively. The Order does not prohibit OEMs from purchasing only Waterous Mid-Ship Mounted Fire Pumps if, in the OEM's sole discretion, it deems it advisable. Moreover, Waterous retains the right to refuse to sell Mid-Ship Mounted Fire Pumps to any OEM for lawful reasons. THE TYPE OF PUMP YOU USE IS YOUR BUSINESS, AND YOU ARE FREE TO OFFER AND INSTALL COMPETING PUMPS AS ALTERNATIVES TO WATEROUS PUMPS.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order, subject to final approval, from Waterous Company, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance along with the proposed order alleges that the proposed respondent violated Section 5 of the Federal Trade Commission Act by maintaining exclusive dealing arrangements with its customers—manufacturers of municipal fire trucks.

The complaint alleges that respondent Waterous and Hale Products are the two largest manufacturers of mid-ship mounted fire pumps (''fire pumps'') sold in the United States. Together, respondent Waterous and Hale Products account for close to or more than ninety (90) percent of the fire pump market in the United States. Except to the extent that competition has been restrained as alleged in the complaint, respondent Waterous and Hale Products have been and are now in competition among themselves and with other fire pump manufacturers in the United States.

The complaint alleges that, for over fifty (50) years and until approximately 1991, both respondent Waterous and Hale Products maintained exclusive dealing arrangements. Each sold fire pumps to its customers on the condition or understanding that such customers would deal in its pumps exclusively, or that such customers would refrain from buying and selling pumps made by the other. The complaint, and a companion complaint against Hale Products, further allege that both companies believed that continued exclusive dealing by the two companies would tend to exclude competitors from the market, and that continued exclusive dealing, if maintained by both companies, would tend to reduce competition between them over price and over non-price terms, such as quality differences and delivery times. Consequently, both continued to maintain and to enforce exclusive dealing policies.

The complaint alleges that, under these circumstances, respondent's exclusive dealing agreements violated Section 5 of the Federal Trade Commission Act. Specifically, the complaint alleges that exclusive dealing substantially reduced competition in the sale and marketing of fire pumps by facilitating an allocation of customers between respondent Waterous and Hale Products, and by excluding or tending to exclude other actual or potential manufacturers of fire pumps from the market. Facilitating coordinated interaction, and raising entry barriers that exclude competition, are two ways that exclusive dealing restraints can be anticompetitive. *See Beltone Electronics Corp.,* 100 F.T.C. 68, 207 (1982).

The Proposed Consent Order

The proposed consent order would prohibit respondent Waterous from entering into, continuing, or enforcing any condition, agreement, or understanding with any fire truck manufacturer that such manufacturer will refrain from the purchase or sale of any other manufacturer's fire pumps. The proposed order, however, would allow certain lawful discounts such as volume discounts that do not run afoul of the provisions of the Robinson-Patman Act.

The proposed consent order would also require respondent Waterous to notify its customers of the terms of the order. Specifically, the proposed consent would require respondent Waterous to send a copy of the order to each fire truck manufacturer it sold a pump to during the two (2) years prior to the entry of the order; for three (3) years after the order is entered, respondent Waterous must send a copy of the order to each new customer to whom it provides a price list or a price quotation. The order would also requre notification to such customers that respondent will not restrict the brand of pumps they may use.

The proposed consent order would also require respondent Waterous to file with the Commission compliance reports setting forth the manner in which it has complied and is complying with the terms of the order. Such reports are due within sixty (60) days after the order becomes final, and for three (3) years annually on the anniversary of the date the order becomes final. Respondent Waterous must also notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a

successor corporation. In cases subject to the provisions of the Hart-Scott-Rodino Act, however, such prior notification may be made at least ten (10) days prior to the proposed change. Finally, the proposed consent provides that the order will terminate automatically twenty (20) years after the date it becomes final.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Chairman Pitofsky, and Commissioners Varney and Steiger

In the Matter of Waterous Company, Inc./ Hale Products, Inc., File No. 901–0061

We write separately to respond to some of the concerns raised in Commissioner Starek's dissent.

First, we cannot concur with Commissioner Starek's suggestion that, for customer allocation of a component product to work, the participants must be able to allocate the ultimate customers of the finished product (p.1). There will be situations where downstream competition will undermine a customer allocation scheme of a component of a final good. For example, that might be the case where the component is a significant part of the cost of the final product, or where the ultimate consumers have a much stronger preference for the component than the ultimate good.

None of those conditions was present in this case. Fire truck buyers make purchase decisions primarily on the basis of truck brand, the pump price is only a small part of the final purchase price, and pump features are only a small part of the entire truck package. Evidence of relatively high profits at the component level supports this interpretation.

Second, Commissioner Starek suggests that these exclusive dealing arrangements would not increase the likelihood of successful collusion because of the difficulty of detecting cheating. (p.2) We agree that maintaining collusion requires the ability to detect and discipline cheating. But here that methodology was simple: if a fire engine manufacturer used an alternative pump it would be readily identified. Moreover, the fact that the customer allocation through exclusive dealing was maintained over almost five decades suggests that there was an effective method for enforcing the exclusive dealing arrangements.

Third, Commissioner Starek observes that instability at the truck manufacturing stage (i.e., changes in market share) may lead to the demise of any customer allocation agreement with respect to a component. We agree that might be the case where a very large portion of a pump manufacturer's sales were tied to a single truck manufacturer. Here, however, the arrangements were durable; the fact is that instability among truck manufacturers did not deter the effectiveness of these agreements.

Finally, Commissioner Starek suggests that the arrangements did not foreclose new entry because they were not really exclusive. He relies on the fact that some OEMs were willing to install the pumps of a third manufacturer at customers' request. (p. 3) The fact that the exclusive policy was not perfect and that some truck manufacturers may have offered the pumps of a third pump manufacturer, accounting for a very small share of pump sales, did not have a significant effect on competition at the pump level. The key to competition in this market was the competitive positions of Hale and Waterous, which together account for more than 90% of the market. The evidence establishes that Hale and Waterous understood that as long as both firms maintained the exclusive dealing arrangements, competition between them would be diminished, prices would be higher and entry would be more difficult. That is in fact how things worked in this industry for several decades, and those are the anticompetitive effects that the Commission's orders are intended to address.

Dissenting Statement of Commissioner Mary L. Azcuenaga

In the matter of Waterous Company, Inc./ Hale Products, Inc. File No. 901–0061.

I generally endorse the views expressed by Commissioner Starek in his dissenting statement. The evidence does not in my view suggest a market in which competition has been unlawfully restrained, and I do not find reason to believe that the law has been violated.

Dissenting Statement of Commissioner Roscoe B. Starek, III

In the matter of Waterous Company, Inc./ Hale Products, Inc. File No. 901 0061.

I respectfully dissent from the Commission's decision to accept consent agreements with Waterous Company, Inc., and Hale Products, Inc., two producers of midship-mounted pumps for fire trucks. The proposed complaints claim anticompetitive effects arising from alleged exclusive dealing arrangements between each proposed respondent and its direct customers, the original equipment manufacturers of fire trucks (''OEMs''), in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. I am unpersuaded that the arrangements between proposed respondents and their customers can be characterized accurately as ''exclusive.'' More important, however, there is no sound theoretical or empirical basis for believing that these relationships, even if exclusive, harmed competition; in fact, there are good reasons to believe the contrary. In any event, even if one assumes arguendo the validity of the theories of anticompetitive effects, the proposed orders are unlikely to remedy those alleged effects.

The complaints allege, inter alia, that the arrangements between Waterous, Hale, and their OEM customers reduce competition in two ways—by facilitating an allocation of customers between Waterous and Hale, and by creating a barrier to the entry of new pump manufacturers. The first theory posits that Waterous and Hale wish to set the prices of their fire pumps collusively but find themselves unable to reach and maintain a direct agreement on price. Under this hypothesis, in order to achieve collusive pricing without a direct agreement on prices, Waterous and Hale have entered into a de facto agreement to allocate fire truck OEMs between themselves. That agreement, combined with an agreement not to bid for each other's OEM business, makes each pump maker a monopolist with respect to its OEMs. As monopolists, it is argued, the pump manufacturers are able to set supracompetitive prices.

This theory is fatally flawed. For a customer allocation scheme to allow Waterous and Hale to set supracompetitive prices, it necessarily must entail the allocation of the final customers—the fire departments—between the two pump makers. Absent such an allocation, an exclusive dealing contract between a pump maker and one or more OEMs—or even outright vertical integration between the pump producer and one or more OEMs—does not allow the pump producer to raise prices anticompetitively. Under the Commission's theory of competitive harm, Waterous and Hale ''allocate customers'' in lieu of trying to enter into direct pump price agreements that presumably would break down under each party's incentives to undercut the collusive price. In other words, the pump makers'' ''customer allocation''

scheme solves this instability problem. However, unless Waterous and Hale also agree not to compete against one another for the patronage of the fire departments—i.e., unless they collusively allocate fire departments between themselves—each pump maker retains its incentive to take business from its rival through price cuts. Absent allocation of fire department customers, one should expect the same sort of ''cheating,'' with the equivalent competitive result, that the Commission believes frustrated direct collusion between Waterous and Hale.[1]

Thus, it is implausible that ''exclusive dealing'' arrangements between the proposed respondents and their OEMs increase the likelihood of successful collusion between Waterous and Hale. Indeed, there are compelling reasons why such an arrangement might actually reduce this likelihood. Maintaining collusion requires the reasonably accurate identification and punishment of cheating.[2] If Waterous and Hale bid directly and repeatedly for OEM business, cheating might be inferable from one firm's loss of a pump sale to its rival. On the other hand, when Waterous and Hale compete indirectly—*i.e.,* when, as here, their affiliated OEMs submit bids to a fire department incorporating not merely the pump price but rather the prices of all of the truck's components—it will be more difficult for a pump maker to determine whether a loss of business is attributable to price-cutting by the rival pump maker or to reductions in the prices of other components.[3]

The difficulty of maintaining coordination is exacerbated if there is substantial market share volatility among the affiliated customers for reasons unrelated to the pumps. Such volatility makes it difficult for a pump maker to infer whether a sales loss stems from secret pump price concessions or from some other cause. Moreover, if the fortunes of buyers (here, fire truck OEMs) are expected to differ over time—some flagging, others flourishing—the utility of customer allocation as a long-run aid to collusion appears questionable. The pump producer with the misfortune to have affiliated with unsuccessful buyers will have still greater incentives to depart from the collusive scheme. In this regard, the fire truck OEM market witnessed substantial turnover during the period in which the allegedly exclusive agreements were in force.[4] Thus, even if one could overcome the defect in the Commission's collusive theory, these other factors would continue to cast substantial doubt upon this theory's applicability.[5]

The Commission's second theory of harm alleges that exclusive arrangements between pump makers and OEMs have created a barrier to the entry of new pump manufacturers, thereby allowing the incumbent pump sellers to set and maintain supracompetitive prices. Although the vertical section of the 1984 Merger Guidelines[6] is not cited explicitly, the theory here appears to have been drawn from those Guidelines. That analysis focuses on a market in which, but for ease of entry, conditions are favorable to the exercise of market power, and asks whether a vertical merger (or, in the current case, vertical integration through contract) might reduce entry so that market power could be exercised.[7]

Although this effect might occur in some settings, in this case I find the evidence to support invoking this theory tenuous at best. The Commission's complaints apparently rest on the difficulty allegedly experienced by another pump maker in obtaining the patronage of OEMs.[8] An alternative explanation for that firm's failure to achieve a larger market share is that fire departments find its pumps significantly less attractive than those of Hale and Waterous for reasons unrelated to the pump makers' distribution policies. The evidence adduced by the staff is far from sufficient to establish that this firm, or any other actual or potential competitor, was anticompetitively excluded from selling pumps to OEMs.[9]

In addition to the weaknesses in the anticompetitive theories outlined above, a factual problem plagues this case: evidence gathered in the investigation calls into question whether Waterous's and Hale's relationships with their respective OEM customers can even be characterized as ''exclusive.'' Although many OEMs have tended to deal principally with only one pump maker—a fact, I note in passing, that is as consistent with an efficiency rationale for exclusivity as it is with an anticompetitive theory—several larger OEMs affiliated with Waterous and Hale have expressed a willingness to install another manufacturer's pumps at customers' request. Indeed, several OEMs—including at least one of the largest ones affiliated with Hale—have installed another competitor's pumps, and this investigation produced no

[1] The majority's assertion that pump prices and pump brands are relatively unimportant to final consumers (i.e., fire departments) is inconsistent with the events that triggered this investigation—namely, complaints from OEMs that they suffered significant competitive harm from their alleged inability to offer multiple pump brands. It is hard to reconcile those complaints with the majority's claimed end-user indifference to pump brands.

[2] *See, e.g.,* Stigler, ''A Theory of Oligopoly,'' 72 J. Pol. Econ. 44 (1964), *reprinted in* THE ORGANIZATION OF INDUSTRY, ch. 5 (1968).

[3] The majority appears to have misunderstood my point with regard to the detection of cheating. By ''cheating,'' I am not referring to an effort by, say, Hale to sell to Waterous OEMs (or vice-versa). Rather, I refer to Hale's hidden reduction in pump prices to its own customers, which consequently allows those customers to take business from OEMs affiliated with the rival pump brand. This form of cheating is extremely difficult to detect, because an OEM's capture of sales from a rival OEM could be attributable to many reasons other than a reduced pump price.

[4] For example, just since 1990, at least four major OEMs—Grumman, Mack, FMC, and Beck—have exited the market. This period also witnessed entry by such OEMs as Firewolf and Becker. As discussed below, substantial entry into and exit from the OEM market also bear on the applicability of the proposed complaints' second theory of competitive harm (entry deterrence).

[5] With regard to the pump makers' ostensibly high accounting profits, antitrust economists no longer consider accounting profits as a reliable indicator of high economic profits (which can themselves be as consistent with superior efficiency as with collusion). Fisher and McGowan, ''On the Misuse of Accounting Rates of Return to Infer Monopoly Profits,'' 73 Am. Econ. Rev. 82 (1983). Moreover, concerning the longevity of the arrangements between pump makers and OEMs, that factor testifies only to their profitability; it does not distinguish between anticompetitive and procompetitive (or competitively neutral) explanations for their use. Indeed, the asserted instability of OEMs' market shares lends greater credence to an efficiency explanation: one would not expect the parties to an efficient exclusive dealing arrangement to abandon it simply because a customer loses market share, while (as I have explained above) the same cannot be said of an anticompetitive arrangement.

[6] U.S. Department of Justice, Merger Guidelines, § 4.2 (1984), 4 Trade Reg. Rep. (CCH) ¶ 13,103.

[7] The 1984 Merger Guidelines (§ 4.21) identify three necessary but not sufficient conditions for this problem to exist. First, the market in which power would be exercised (the ''primary'' market) must be sufficiently conducive to anticompetitive behavior that the impact of vertical integration in reducing entry would allow such behavior to occur. Second, the degree of vertical integration subsequent to the merger must be so extensive that an entrant into the primary market would also have to enter the other market (the ''secondary'' market). If substantial unintegrated capacity remains in the secondary market after the vertical merger, it is less likely that the merger will facilitate an anticompetitive outcome. Third, the requirement that a firm enter both the primary and secondary markets—rather than just the primary market—must make entry into the primary market significantly more difficult and therefore less likely to occur. 4 Trade Reg. Rep. (CCH) ¶ 13,103 at 20,565–66; see also Blair and Kaserman, LAW AND ECONOMICS OF VERTICAL INTEGRATION AND CONTROL 152 (1983).

[8] The evidence supporting the Commission's entry-deterrence theory appears to consist of that producer's experience in trying to erode OEMs' preferences for Waterous and Hale pumps.

[9] The majority's assertion with respect to the entry-deterring effects of the arrangements is simply that—an assertion. All of the evidence gathered in this investigation is easily reconciled with an efficiency rationale for the challenged arrangements between pump makers and OEMs. In this market, as in any other, superior efficiency on the part of incumbents is a powerful entry deterrent. It is not an antitrust violation.

evidence to suggest that any dealer was terminated for selling that firm's pumps. In any case, however, even if OEM exclusivity could be convincingly demonstrated, it should be clear from the discussion above that a great deal more is required to prove that the exclusive arrangements had anticompetitive effects.[10] The evidence on the competitive effects of existing arrangements between pump makers and OEMs is as consistent with the view that the arrangements induce greater efficiency in the production and marketing of pumps as it is with a market power theory.

I am therefore unpersuaded that respondents' distribution policies have harmed competition in any relevant market. Even had I concluded otherwise, however, I would not endorse the proposed consent orders, which require each respondent to cease and desist from requiring OEM exclusivity as a condition of sale. As I have noted elsewhere,[11] the problems with remedies of this sort are significant.[12] A formal ban on exclusive dealing accomplishes little if respondents have alternative means available to achieve the same end. One readily available method in this case, fully consistent with the terms of the proposed orders, would be to establish a set of quantity discounts providing a customer with substantial financial incentives to procure all of its pumps from a single seller. Moreover, nothing in the orders would prevent a pump manufacturer from unilaterally refusing to sell to an OEM so long as the refusal was not conditioned on a promise of exclusivity. Another possible method would be to give exclusive OEMs better service (e.g., faster delivery times) than their non-exclusive rivals receive.

I cannot endorse an ineffective remedy for a nonexistent harm.

[FR Doc. 96–19592 Filed 7–31–96; 8:45 am]

BILLING CODE 6750–01–P

[10] Cf. *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 58–59 (1977) (plaintiff must demonstrate anticompetitive effects and defendant's market power when challenging vertical restraints).

[11] Dissenting Statement of Commissioner Roscoe B. Starek, III, in Silicon Graphics, Inc., Docket No. C–3626.

[12] For a discussion of why nondiscrimination remedies are problematic, see Brennan, ''Why regulated firms should be kept out of unregulated markets: understanding the divestiture in *United States* v. *AT&T*,'' 32 Antitrust Bull. 741 (1987).

GENERAL SERVICES ADMINISTRATION

FAR Secretariat; Stocking Change and Revision of SF 28, Affidavit of Individual Surety

AGENCY: Office of Policy, Planning, and Evaluation, General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/FAR Secretariat is revising the SF 28, Affidavit of Individual Surety to update the burden statement by correcting the GSA address and deleting OMB's address for submitting comments regarding the burden estimate or any other aspect of the collection of information, and changing the stocking requirement. This form is now authorized for local reproduction and will no longer be available through the Federal Supply Service. Since this form is authorized for local reproduction, you can obtain the updated camera copy in two ways:

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–4755. This contact is for information on completing the form and interpreting the FAR only.

DATES: Effective on or before August 1, 1996.

Dated: July 22, 1996.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 96–19391 Filed 7–31–96; 8:45 am]

BILLING CODE 6820–34–M

Notice of Establishment of Advisory Committee

Establishment of Advisory Committee. This notice is published in accordance with the provisions of Section 9(a)(2) of the Federal Advisory Committee Act (P.L. 92–463) and advises of the establishment of the General Services Administration's Federal Advisory Committee on the National World War II Memorial Design Competition in Washington, D.C. The Administrator of the General Services Administration has determined that establishment of this Committee is in the public interest.

Designation. Federal Advisory Committee on the National World War II Memorial Design Competition, Washington, DC.

Purpose: The purpose of the Committee is to advise and assist GSA and the American Battle Monuments Commission in the review and evaluation of the proposals submitted on the National World War II Memorial Design Competition procurement. This will include, but not be limited to: (1) reviewing and evaluating proposals received; (2) providing the Committee's views regarding specific proposals received, including the bases for the views; and, (3) making recommendations for selection of the Designer and the Architect-Engineer of Record.

Contact for Information. For additional information, contact: Mr. Douglas Nelson, Project Executive, General Services Administration, 7th and D Streets, SW., Washington, DC 20407, Telephone: (202) 708–7623.

Dated: July 26, 1996.

David J. Barram,

Acting Administrator.

[FR Doc. 96–19664 Filed 7–31–96; 8:45 am]

BILLING CODE 6820–34–M

Federal Advisory Committee on the National World War II Memorial Design Competition; Meeting

Notice is hereby given that the General Services Administration's Federal Advisory Committee on the National World War II Memorial Design Competition in Washington, DC, will meet on an as needed basis in August, September, October, and November 1996 (after August 12, 1996). The purpose of the meetings is to review and evaluate the proposals received and make recommendations regarding final selection. The agenda for all meetings will relate to the evaluation of the proposals received.

All meetings will be closed to the public because procurement sensitive matters, including the pre-award evaluation of proposals, will be discussed. The bases for closing the meetings are 5 U.S.C. 552b(c) (3) and (4) (Government in the Sunshine Act).

Questions regarding these meetings should be directed to: Mr. Douglas Nelson, Project Manager, General Services Administration, 7th and D Streets, SW., Washington, DC 20407.

Dated: July 26, 1996.

David J. Barram,

Acting Administrator.

[FR Doc. 96–19665 Filed 7–31–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. August 15 and 16, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, August 15, 1996, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 6 p.m.; closed presentation of data, August 16, 1996, 8 a.m. to 10 a.m.; closed committee deliberation, 10 a.m. to 1 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 7, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 15, 1996, the committee will hear presentations and engage in scientific discussion on recent developments in technique and measurement of body composition.

Closed presentation of data. On August 16, 1996, the committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drug and new drug applications (IND's and NDA's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. On August 16, 1996, the committee will review trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances.

Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 26, 1996.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 96–19744 Filed 7–30–96; 3:29 pm]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–139–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1996

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

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other Federal Register notices, and statements of policy that were published during January, February, and March of 1996 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the Federal Register at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this time frame. Generally, we also provide the content of revisions to the Medicare Coverage Issues Manual. There were no revisions published during the period January 1 through March 31, 1996. On August 21, 1989, we published the content of the Manual (54 FR 34555) and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual fulfills this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:

Margaret Cotton, (410) 786–5255 (For Medicare instruction information).

Pat Prete, (410) 786–3246 (For Medicaid instruction information).

Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information).

Cathy Johnson, (410) 786–5241 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the Federal Register at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we list in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published during January through March 1996.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies many of those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the Federal Register (54 FR 34555) that

contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the Federal Register. We also sometimes issue proposed or final national coverage decision changes in separate Federal Register notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. This notice contains, as Addendum IV, reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We have not reprinted the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, coverage decisions, or Food and Drug Administration-approved investigational device exemptions published during the time frame to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into six addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the Federal Register that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989 constitute a complete manual as of the end of the quarter covered by this notice. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous Federal Register documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

Addendum V lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the Federal Register during the quarter covered by this notice. For each item, we list the date published, the Federal Register citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. That final rule states that we will announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum VI includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number). Future notices will announce investigational device exemption categorizations and the numbers assigned by the Food and Drug Administration for the quarter for which the notices cover.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily Federal Register. Interested individuals may purchase individual copies or subscribe to the Federal Register by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The Federal Register is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using (1) the

World Wide Web—the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/; (2) local WAIS client software, or (3) telnet—swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about GPO Access, contact the GPO Access User Support Team by sending Internet e-mail to help@eids05.eids gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the Federal Register.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future, and with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA–Pub. 14–3) transmittal entitled ''Beneficiary Address Change,'' use the Superintendent of Documents No. HE 22.8/7 and the HCFA transmittal number 1538.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Bureau of Program Operations, Issuances Staff, Health Care Financing Administration, S3–01–27, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5255.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3246.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Bureau of Policy Development, Office of Chronic Care and Insurance Policy, Health Care Financing Administration, C4–11–04, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Cathy Johnson, Bureau of Policy Development, Office of Regulations, Health Care Financing Administration, C5–09–05, 7500 Security Blvd., Baltimore, MD 21244–1850, Telephone (410) 786–5241.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: July 19, 1996.

Carol J. Walton,

Director, Bureau of Program Operations.

Addendum I

This addendum lists the publication dates of the most recent quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual. For a complete listing of the quarterly updates to the Coverage Issues Manual published during March 20, 1990 through November 14, 1994, please refer to the January 3, 1995 update (60 FR 134).

January 3, 1995 (60 FR 132)
April 6, 1995 (60 FR 17538)
July 26, 1995 (60 FR 38344)
November 15, 1995 (60 FR 57435)
April 8, 1996 (61 FR 154)
June 26, 1996 (61 FR 33119)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JANUARY THROUGH MARCH 1996

Trans. No.	Manual/Subject/Publication Number
	Intermediary Manual **Part 3—Claims Process (HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6–1)**
1671	• Claims Processing Terminology. Handling Incomplete or Invalid Claims. Data Element Requirements Matrix.
1672	• PRO Reporting on Medical Review.
1673	• Guidelines for Review of Claims for Epoetin.
	Carriers Manual **Part 3—Claims Process (HCFA Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1533	• Nomenclature and Organization of the List. Rebundling of CPT Codes. Added ASC Codes.
1534	• Positron Emission Tomography Scans. Billing Requirements for PET Scans. Claims Processing Instructions for PET Scan Claims.
1535	• Claims Processing Terminology. Handling Incomplete or Invalid Claims. Data Element Requirements Matrix. Conditional Data Element Requirements.
1536	• Reasonableness and Necessity.
1537	• Item 24—Type of Service.
1538	• Beneficiary Address Change.
	Carriers Manual **Part 4—Professional Relations (HCFA Pub. 14–4)** **(Superientendent of Documents No. HE 22.8/7–4)**
11	• Items 1–13—Patient and Insured Information. Items 14–33—Physician or Supplier Information. Place of Service Codes and Definitions.
	Program Memorandum **Intermediaries/Carriers (HCFA Pub. 60B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–96–1	• Coverage for Occupational Therapists in Independent Practice.
	Progam Memorandum **Carriers (HCFA Pub. 60A/B)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–96–1	• New Interest Rate Payable on Clean Claims Not Paid Timely.
AB–96–2	• Exclusion Process, § 1128(b)(7).
	Progam Memorandum **Insurance Commissioners (HCFA Pub. 80)** **(Superintendent of Documents No. HE 22.8/6–5)**
96–1	• Medigap Bulletin Series (Number Five).
	Peer Review Organization **(HCFA Pub. 19)** **(Superintendent of Documents No. HE 22.8/8–15)**
58	• Background. Beneficiary Hotline. Interaction with Beneficiary Groups. Other Activities.
59	• PRO Reporting on Medical Review. Tracking Adjustments. PRO/Intermediary/Carrier Coordination Activities. Additional PRO/Carrier Coordination Activities.
60	• Background.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS JANUARY THROUGH MARCH 1996—Continued

Trans. No.	Manual/Subject/Publication Number
	PRO Review Responsibilities. Types of Prohibited Actions That Circumvent PPS. Actions to be Taken by PRO. Authority. Types of Denial Determinations. Notification of Denial. Content of Denial Notice. Statutory and Regulatory Requirements. Requests for Reconsideration. Reconsideration Process. Circumvention of Prospective Payment System. Background. Appeals Council Review. Judicial Review. Circumvention of PPS Denial Model Notice. Circumvention of PPS Reconsideration Model Notice.
61	• Training. Citations and Authority.
	Hospice Manual (HCFA Pub. 21) (Superintendent of Documents No. HE 22.8/18)
47	• Credit Balance Reporting Requirements. Payment of Amounts Owed Medicare. Medicare Credit Balance Report Certification. Medicare Credit Balance Report (HCFA–838)
	Provider Reimbursement Manual Part 1—(HCFA Pub.15–1) (Superintendent of Documents No. HE 22.8/4)
389	• Travel Expense.
390	Regional Medicare Swing-Bed SNF Rates.
391	Interest. Necessary. Accounts Receivable Financing. Costs Included in Capital-Related Costs. Capital Related Costs of Related Organizations. Debt Issuance Costs, Debt Discounts, and Debt Redemption Costs. Costs Excluded From Capital-Related Costs. Jointly Owned Equipment. Unpaid Compensation.
392	• Ambulance Service.
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
96–1	• Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Sanctioned/Reinstated.
96–2	• Report of Physicians/Practioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—December 1995 and January 1996.
96–3	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers/Reinstated—February 1996.

Addendum IV

There are no revisions to the Coverage Issues Manual for this quarter.

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 61 page	CFR Part	File code *	Regulation title	End of comment period	Effective date
01/19/96	1389–1390	.....	BPD–854–NC	Medicare and Medicaid Programs; Announcement of Applications from Hospitals Requesting Waivers for Organ Procurement Service Area.	03/19/96	01/19/96
01/23/96	1769–1772	.....	ORD–083–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: November 1995.	.....	.....

ADDENDUM V.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 61 page	CFR Part	File code*	Regulation title	End of comment period	Effective date
01/26/96	2516–2519	.....	BPO–134–NC	Medicare Program; Revised Criteria and Standards for Evaluating Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Regional Carriers' Performance Beginning February 1, 1996.	02/26/96	02/01/96
01/26/96	2516	.....	ORD–078–N	Medicare Program; Announcement of Funding Availability for a Cooperative Agreement for an End-Stage Renal Disease (ESRD) Managed Care Demonstration.	.....	.....
01/29/96	2725–2727	412, 413	BPD–825–FCN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1996 Rates; Corrections.	.....	10/01/95
02/27/96	7266	.....	ORD–084–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: December 1995.	.....	.....
02/29/96	7798	.....	ORD–085–N	New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: January 1996.	.....	.....
03/08/96	9405–9410	440	MB–071–P	Medicare Program; Coverage of Personal Care Services.	05/07/96	.....
03/27/96	13430–13450	417,434	OMC–010–FC	Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations.	05/28/96	04/26/96

*GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; SN—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling.

Addendum VI.—Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes:

Class I—Devices for which the general controls of the Food, Drug, and Cosmetic Act, such as adherence to good manufacturing practice regulations, are sufficient to provide a reasonable assurance of safety and effectiveness.

Class II—Devices that, in addition to general controls, require special controls, such as performance standards or postmarket surveillance, to provide a reasonable assurance of safety and effectiveness.

Class III—Devices that cannot be classified into Class I or Class II because insufficient information exists to determine that either special or general controls would provide reasonable assurance of safety and effectiveness. Class III devices require premarket approval.

Under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories: Experimental/Investigational (Category A) Devices, or Non-Experimental/Investigational (Category B) Devices. Under this categorization process, an experimental/investigational (Category A) device is an innovative device in Class III for which ''absolute risk'' of the device type has not been established (that is, initial questions of safety and effectiveness have not been resolved and the Food and Drug Administration is unsure whether the device type can be safe and effective). A non-experimental/investigational (Category B) device is a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained Food and Drug Administration approval for that device type.

The criteria the Food and Drug Administration uses to categorize an investigational device under Category B include the following:

(1) Devices, regardless of the classification, under investigation to establish substantial equivalence to a predicate device, that is, to establish substantial equivalence to a previously/currently legally marketed device.

(2) Class III devices whose technological characteristics and indication for use are comparable to a Pre-Market Approval (PMA)-approved device.

(3) Class III devices with technological advances compared to a PMA-approved device, that is, a device with technological changes that represent advances to a device that has already received PMA-approval (generational changes).

(4) Class III devices that are comparable to a PMA-approved device but are under investigation for a new indication for use. For purposes of studying the new indication, no significant modification to the device were required.

(5) Pre-amendments Class III devices that become the subject of an investigational device exemption after the Food and Drug Administration requires premarket approval, that is, no PMA application was submitted or the PMA application was denied.

(6) Nonsignificant risk device investigations for which the Food and Drug Administration required the submission of an investigational device exemption.

The following information presents the device number, category (in this case, A), and criterion code. G950168 A2, G950175 A1, G960026 A2, G960033 A1, G960034 A1, G960055 A2, G960060 A1, G960066 A2

The following information presents the device number, category (in this case, B), and criterion code. G950194 B1, G950210 B1, G950212 B3, G950217 B1, G950218 B1, G950229 B3, G950231 B, G960003 B4, G960018 B4, G960019 B4, G960021 B2, G960022 B4, G960023 B2, G960024 B3, G960025 B2, G960027 B4, G960028 B1, G960029 B4, G960030 B2, G960031 B2, G960035 B4, G960037 B4, G960038 B4, G960041 B4, G960043

B1, G960046 B1, G960051 B3, G960054 B3, G960056 B5, G960057 B2, G960059 B2, G960061 B2, G960062 B2

Note: Some investigational devices may exhibit unique characteristics or raise safety concerns that make additional consideration necessary. For these devices, HCFA and the Food and Drug Administration will agree on the additional criteria to be used. The Food and Drug Administration will use these criteria to assign the device(s) to a category. As experience is gained in the categorization process, this addendum may be modified.

[FR Doc. 96–19559 Filed 7–31–96; 8:45 am]
BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/205–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444/800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

CORNING Clinical Laboratories, 4771 Regent Blvd., Irving, TX 75063, 800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath)

CORNING Clinical Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–284–7515 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories)

CORNING Clinical Laboratories, 4444 Giddings Road, Auburn Hills, MI 48326, 800–444–0106/810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath)

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING Clinical Laboratories, South Central Divison, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 (formerly: Metropolitan Reference Laboratories, Inc.)

CORNING Clinical Laboratory, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5000 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories)

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science)

CORNING Nichols Institute, 7470–A Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT))

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813–936–5446/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

Drs. Weber, Palmer, Macy, Chartered, 338 N. Front St., Salina, KS 67401, 913–823–9246

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703–742–3100 (Formerly: National Health Laboratories Incorporated)

Laboratory Corporation of America, 21903 68th Ave. South, Kent, WA 98032, 206–395–4000 (Formerly: Regional Toxicology Services)

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601–342–1286 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–222–5835
MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901–795–1515
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699–0008, 419–381–5213
Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services,1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–244–8800, 800–999–LABS
Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818–989–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

No laboratories withdrew from the National Laboratory Certification Program during July.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–19490 Filed 7–31–96; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit 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.*):

PRT–817414

Applicant: John Teeter, Fairview, NC

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–817217

Applicant: African Lion Safari & Game Farm, Ontario Canada

The applicant requests a permit to reexport and reimport four captive born Asian elephants (*Elephants maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–817258

Applicant: African Lion Safari & Game Farm, Ontario Canada

The applicant requests a permit to reexport and reimport four captive born Asian elephants (*Elephants maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–816663

Applicant: Tom Bolack, Farmington, NM

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and

Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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 part 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, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203, Phone: (703–358–2104); Fax (703–358–2281).

Dated: July 26, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–19508 Filed 7–31–96; 8:45 am]

BILLING CODE 4310–55–U

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Mark Schriver, Orwigsburg, PA. The applicant wishes to amend his approved cooperative breeding program to include the Red-naped shaheen (*Falco peregrinus babylonicus*) and the Steppe eagle (*Aquila rapax nipalensis*). The Virginia Falconers' Association maintains responsibilty for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 26, 1996.

Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 96–19509 Filed 7–31–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Walker River Irrigation Project, Nevada

ACTION: Notice of proposed operation and maintenance rate increase.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Walker River Irrigation Project for 1997 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management control,

(b) Materials and supplies,

(c) Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement,

(e) Capitalization expenses,

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, 1 North First Street, Phoenix, Arizona 85001–0010, telephone (602) 379–6600.

DATES: Comments must be submitted on or before September 3, 1996.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Assistant Secretary of Indian Affairs by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Walker River Irrigation Project for Calendar Year 1997 and subsequent years.

The purpose of this notice is to announce a proposed increase in the Walker River Project assessment rates proportionate with actual operation and maintenance costs.

The Bureau of Indian Affairs proposes to increase the Walker River Indian Irrigation Project's operation and maintenance (O&M) assessment rate from the current $7.32 per assessable acre for trust lands and $15.29 per assessable acre non-trust lands to $15.29 per acre for all project lands.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Dated: July 24, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–19589 Filed 7–31–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–060–1990–00]

Nominations for the Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for the Bureau of Land Management's California Desert District Advisory Council.

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for its District Advisory Council to serve on the 1997–1999 three-year term. Council members provide advice and recommendations to BLM on the management of public lands in southern California. Public notice begins with the publication date of this notice. Nomination will be accepted through August 31, 1996.

The California Desert District Advisory Council is compressed of 15

private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 10 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced and representative of the various interests concerned with the management of the public lands.

The five positions to be filled include:

—one transportation/right-of-way representative;
—one recreation representative;
—the elected official (county government) representative;
—two public-at-large representatives.

Council members serve three-year terms and may be nominated for reappointment for an additional three-year term. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties. Any group or individual may nominate a qualified person for any position, based upon their education, training, knowledge, or experience. This term would begin January 1, 1997.

The Council also is balanced geographically, and BLM will try to find qualified representatives from each area. The California Desert District covers portions of eight counties, and includes 10 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Nominations must be submitted to the District Manager by August 31, 1996, and must include the name of the nominee; work and home addresses and telephone numbers; a biographical sketch that includes the nominee's work, public service record, and applicable outside interests that qualify him or her for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council.

Individuals may nominate themselves or others. Nominees will be evaluated based on their education, training, experience of the issues, and knowledge of the geographical area of the Council. All nominations must be accompanied by letters of reference from represented interests or organizations.

The nomination period will end August 31, 1996. Nominations for the District Advisory Council should be sent to the District Manager, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, Bureau of Land Management, Public Affairs, (909) 697–5215.

Dated: July 26, 1996.

Alan Stein,

Acting District Manager.

[FR Doc. 96–19561 Filed 7–31–96; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sales 169, 172, 175, 178, and 182

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations, and Notice of Intent (Call/NOI) to Prepare an Environmental Impact Statement (EIS).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356, (1994)) (OCSLA), and the regulations issued thereunder (30 CFR Part 256).

2. Purpose of Call

The purpose of the Call is to gather information for the following tentatively scheduled Outer Continental Shelf (OCS) Lease Sales in the Central Gulf of Mexico (CGOM):

Sale No.	Tentative sale date
169	March, 1998.
172	March, 1999.
175	March, 2000.
178	March, 2001.
182	March, 2002.

Information and nominations on oil and gas leasing, exploration, and development and production within the CGOM are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCSLA, and regulations at 30 CFR part 256.

Please note this is the first issuance of a multi-sale Call by MMS and the first Call in the Proposed 1997–2002 5-Year Program. Responses are requested relative to all sales included herein. The MMS has modified its prelease planning and decision process for proposed Central and Western Gulf lease sales. This multi-sale process is based on over a dozen years of leasing at an annual pace which have shown that the sale proposals in the CGOM (and the WGOM) are very similar from year to year. The multi-sale process in the Central Gulf will incorporate planning and analysis for 5 sales: sales 169, 172, 175, 178, and 182. From the initial step in the process (the Call for Information and Nominations) through the final EIS/Consistency Determination (CD) step, this process will cover multiple sale proposals. There will also be complete NEPA, OCSLA, and CZMA coverage for each sale after the first sale—either an Environmental Assessment (EA) or Supplemental EIS and a CD, focusing primarily on new issues or changes in a State's Federally-approved coastal management plan, will be prepared for each subsequent sale. A proposed and final Notice of Sale will be prepared for each proposed sale. (The multi-sale process in the Western Gulf will incorporate planning and analysis for 4 sales: sales 171, 174, 177, and 180. A Call for that multi-sale process is expected to be issued later this year.)

This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA and OCSLA. Establish departmentall procedures will be employed.

3. Description of Area

The general area of this Call covers the entire CGOM. The CGOM is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence sough to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments at this time consists of approximately 47.8 million acres.

A standard Call for Information Map depicting the CGOM on a block-by-

block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: 1–800–200–GULF.

4. *Area Excluded from this Call.* The entire CGOM is proposed for possible leasing and no areas are excluded from this Call.

5. Instructions on Call

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled ''Nominations for Proposed 1998–2002 Lease Sales in the Central Gulf of Mexico'' or ''Comments on the Call for Information and Nominations for Proposed 1998–2002 Lease Sales in the Central Gulf of Mexico.'' The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the above address.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in each of the proposed sales in the CGOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736–2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

6. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected in the scoping process for the Environmental Impact Statement (EIS) and to develop proposed actions and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. And, fifth, comments may be used to assess potential conflicts between offshore gas and oil activities and a State CMP.

7. Existing Information

The MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on tentatively scheduled lease sales. As a result of this continually ongoing assessment, it has been determined that the status of the existing data available for planning, analysis, and decisionmaking is adequate and extensive.

An extensive environmental studies program has been underway in the CGOM since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487–4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under ''Description of Area''), or telephone (540) 736–2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the Technical Communication Service, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 20170, phone: (703) 787–1080.

8. Tentative Schedule

The following is a list of tentative milestone dates applicable to sales covered by this Call:

	Multi-sale process milestones for proposed 1998–2002 CGOM sales
Call/NOI Published	July 1996.
Comments due on Call/NOI.	September 1996.
Area Identification	September 1996.
Draft EIS published	June 1997.
Public Hearings	July 1997.
Final EIS and CD published.	November 1997.

	Sale-specific process milestones for proposed 1998–2002 CGOM sales
Request for Information to Begin Sale-Specific Process.	12 months before each sale.
Environmental Review (EA/FONSI/SEIS) published.	4 to 7 months before each sale.
Proposed Notice and Consistency Determination.	4 months before each sale.
Final Notice of Sale	1 month before each sale.
Tentative Sale Date	March of each year.

Notice of Intent to Prepare an Environmental Impact Statement

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 as amended (42 USC 4321 et seq. (1988))(NEPA).

2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of the NEPA, the MMS is announcing its intent to prepare a multi-sale EIS on the tentatively scheduled 1998–2002 oil and gas leasing proposals in the CGOM, off the States of Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposals which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

3. New EIS procedure

MMS is proposing to prepare a single EIS for all five CGOM sales in the proposed 1998–2002 period. The resource estimates and scenario information on which the EIS analyses are based will be presented as a range of resources and activities that would encompass any of the five proposed sales in the CGOM.

The proposal will provide several benefits. It will focus the NEPA process by making impact types and levels that change between sales more easily recognizable. New issues will be more easily highlighted for the decision-makers and public. For sales after 1998, the process will allow for presale planning that spans only one year, rather than the current two-year process which causes confusion because of the overlap in planning for sales in successive years and makes it difficult for the decisionmaker, industry, and the public to keep track of which sale process is being referred to for any given decision point. It will also eliminate the repetitive issuance of a complete EIS for each sale, a practice that has resulted in ''review burnout'' in Federal, State, and local governments, and the public.

The proposed actions analyzed in the EIS will be each of the sales on the 5-year schedule for the central Gulf of Mexico planning area. The EIS will include an analysis of the environmental effects of holding one sale, a sale ''typical'' of any in the planning area, which may be held in the remainder of the 5-year program. The scenario will cover a range of resources and activities that will encompass any of the four follow-up proposed actions. Later sales can then be compared to the initial analysis in an environmental assessment or supplemental environmental impact statement. Formal consultation with the public will be initiated in subsequent years to obtain input to assist in the determination of whether or not the information and analyses in the original multisale EIS are still valid. An Information Request would be issued that will specifically describe the action for which we are requesting input.

4. Instructions on NOI to Prepare an EIS

Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under ''Description of Area.'' Comments should be enclosed in an envelope labeled ''Comments on the NOI to Prepare an EIS on the proposed 1998–2002 Lease Sales in the Central Gulf of Mexico.'' Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Dated: July 26, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–19547 Filed 7–31–96; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Comprehensive Management and Use Plan, Juan Bautista de Anza National Historic Trail, California and Arizona; Notice of Availability of Final Environmental Impact Statement

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement (FEIS) assessing the potential impacts of the proposed Comprehensive Management and Use Plan for the Juan Bautista de Anza National Historic Trail, a 1200-mile trail in California and Arizona.

The proposal (alternative D), which is the National Park Service's comprehensive management and use plan for the trail, calls for marking the historic route, identifies an auto route, and envisions a continuous multi-use recreational retracement trail. The National Park Service (NPS) will take an active role in administrative oversight of the trail by helping protect a trail right-of-way and historic, cultural, and natural resources associated with the trail. The NPS will certify eligible sites and segments and provide leadership of state, regional, and local governments, private landowners, organizations, corporations, and individuals to create a continuous and unified trail. The NPS will form partnerships with nonprofit groups supporting the Anza Trail. Interpretive programs and a system of wayside exhibits will enhance visitor opportunities along the route. A planned promotional and tourism program will increase visitor awareness of American Indian and Spanish colonial cultures and history related to the Anza expeditions to Alta (Upper) California.

The other alternatives include No Action (alternative AA), Single Theme (alternative A), Multi-theme (alternative B), and Broad Outreach (alternative C). Alternative AA represents what would happen if there were no national trail. Alternative A would limit trail recognition and resource protection to federal lands and state parks and focus interpretation on only the 1775–76 Anza trek. Trail uses would be limited to those of the original expedition. Management would emphasize volunteers, and the National Park Service would play a minor administrative role. Alternative B is similar to the proposal but would not include the promotional aspects. Alternative C is similar to the proposal, but would broaden the interpretive themes to the overlay of history along the trail route from prehistory to the present and would include points of interest associated with the trail corridor.

The environmental consequences of the proposed action and alternatives were addressed in the draft environmental impact statement (DEIS) and are presented with modifications in this FEIS. The public review period for the DEIS ended March 1, 1995.

Responses to public and agency comment on the DEIS are included in the FEIS. This programmatic FEIS considers impacts to cultural resources, natural resources, and the socioeconomic environment. No significant adverse impacts are anticipated.

DATES: The no-action period for the plan will commence when the Environmental Protection Agency formally announces the availability of the FEIS in the Federal Register, and end 30 days thereafter.

ADDRESSES: Inquiries and comments on the FEIS should be directed to: Superintendent, Pacific Great Basin System Support Office, 600 Harrison Street, Suite 600, San Francisco, CA 94107, Attention: Meredith Kaplan. The telephone number for further information is (415) 744–3968.

Copies of the plan and FEIS are available at the Pacific Great Basin System Support Office at the above address. Copies are also available for inspection at libraries located in cities along the Anza Trail route.

Dated: July 22, 1996.

Patricia L. Neubachen,

Acting Field Director, Pacific West Area.

[FR Doc. 96–19599; Filed 7–31–96; 8:45 am]

BILLING CODE 4310–10–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of Cancellation of Open Hearing.

SUMMARY: The Appellate Rules Committee public hearing scheduled to be held in Denver, Colorado on August 2, 1996, has been canceled. [Original notice of hearing appeared in the Federal Register of May 24, 1996 (61 FR 26207).]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: July 26, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–19544 Filed 7–31–96; 8:45 am]

BILLING CODE 2201–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a Consent Decree in *United States* v. *Cumberland Farms, Inc., et al.,* Civil No. 91–10051–MLW (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on July 25, 1996.

The Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), resulting from the defendants' discharge of fill material into wetlands without a permit from the U.S. Army Corps of Engineers. Cumberland Farms, Inc. and other parties unlawfully filled freshwater wetlands to create approximately 176 acres of cranberry beds at three separate sites in Hanson and Halifax, Massachusetts. Under the Consent Decree, Cumberland Farms, Inc. will pay a $50,000 civil penalty, establish a 30 acre wildlife and wetlands corridor, and transfer 225 acres of property to the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement for conservation purposes.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addresses to James W. Rubin, Attorney, U.S. Department of Justice, Policy, Legislation and Special Litigation Section, Environment and Natural Resources Division, P.O. Box 4390, Ben Franklin Station, Washington, DC 20044–4390, and should refer to *United States* v. *Cumberland Farms, Inc., et al.,* Civil No. 91–10051–MLW (D. Mass.).

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, J.W. McCormack Post Office and Court House, 90 Devonshire Street, Boston, MA 02109.

Anna Wolgast,

Acting Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 96–19596 Filed 7–31–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 15, 1996, and published in the Federal Register on March 27, 1996, (61 FR 13518), High Standard Products, 1100 W. Florence Avenue, #8, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxyamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
Normorphine (9313)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Fentanyl (9801)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–19611 Filed 7–31–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

NUCLEAR REGULATORY COMMISSION

[NRC Docket Nos. 70–7001; 70–7002]

Memorandum of Understanding With Respect to the Gaseous Diffusion Plants

AGENCIES: Nuclear Regulatory Commission and Occupational Safety and Health Administration, Labor.

ACTION: Publication of Memorandum of Understanding between the Nuclear Regulatory Commission (NRC) and the Occupational Safety and Health Administration (OSHA).

SUMMARY: NRC and OSHA have entered into a Memorandum of Understanding that describes the authorities of NRC and OSHA in implementing the Energy Policy Act of 1992 provision on occupational safety and health hazards at the gaseous diffusion plants, currently operated by the U.S. Enrichment Corporation (USEC), covering inspection, investigation, enforcement, and other regulation relating to such hazards. A memorandum of agreement is required by the new USEC Privatization Act, and will apply to operations of USEC and any corporation which succeeds USEC. The text of the Memorandum of Understanding is set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. John W. N. Hickey, telephone 301–415–7192, Office of Nuclear Material Safety and Safeguards, MS T–8A–33, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or Mr. Gregory Watchman, telephone 202–219–6091, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Dated at Rockville, Maryland, this 26th day of July 1996.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards.

For the Occupational Safety and Health Administration.

Gregory Watchman,

Deputy Assistant Secretary for Occupational Safety and Health.

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration With Respect to the Gaseous Diffusion Plants

I. Legislation and Authorities

The Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992 (the Act), created the United States Enrichment Corporation (USEC), a government corporation, to manage and operate the two uranium gaseous diffusion enrichment plants (GDPs) in Paducah, Kentucky, and Piketon, Ohio, owned and previously operated by the U.S. Department of Energy (DOE). Pursuant to the Act, on July 1, 1993, USEC began leasing from DOE substantial operating portions of the two GDPs. Section 1312 of the Act requires USEC to be subject to and comply with the Occupational Safety and Health Act (OSH Act) in the same manner, and to the same extent, as an employer is subject to the OSH Act, notwithstanding sections 3(5), 4(b)(1), and 19 of the OSH Act.

In addition, the Act requires the Nuclear Regulatory Commission (NRC) to promulgate standards applicable to the GDPs, to protect the public health and safety from radiological hazards, and to provide for the common defense and security. NRC must establish an annual certification process for compliance with these standards. NRC published its final standards, 10 CFR Part 76, ''Certification of Gaseous Diffusion Plants,'' on September 23, 1994 (59 FR 48944). NRC will assume regulatory oversight responsibility with respect to USEC's compliance with the Part 76 standards after NRC completes the first compliance certification process.

The USEC Privatization Act, signed into law on April 26, 1996, provides for establishment of a private corporation to succeed USEC. The USEC Privatization Act specifies that the private corporation will be subject to the OSH Act, but the exceptions to sections 3(5), 4(b)(1), and 19 were removed with respect to the private successor. Furthermore, the USEC Privatization Act requires NRC and Occupational Safety and Health Administration (OSHA) to enter into a memorandum of agreement, within 90 days of enactment of the Privatization Act, to govern the exercise of their authority over occupational safety and health at the GDPs.

II. Background and Purpose

A. Both NRC and OSHA have responsibilities concerning occupational safety and health at GDPs. Because it is not always practical to sharply identify boundaries between the nuclear and radiological safety regulated by NRC and the industrial safety regulated by OSHA, the two agencies have agreed to coordinate their regulatory programs to assure worker safety, avoid regulatory gaps in the protection of workers, and avoid duplicative regulation.

B. The purpose of this Memorandum of Understanding (MOU) between NRC and OSHA is to delineate the general areas of responsibility of each agency; to describe generally the efforts of the agencies to achieve worker protection; and to provide guidelines for coordination of interface activities between the two agencies at the GDPs. The MOU applies both to USEC and any private successor corporation.

C. DOE remains the owner of the GDP sites and facilities, and continues to conduct and regulate activities at the sites that are outside NRC jurisdiction. This MOU does not apply to DOE facilities that are not leased, and does not affect jurisdictional issues between OSHA and DOE.

III. Hazards Associated With GDPS

Working conditions at the GDPs involve both radiological and non-radiological occupational hazards. Frequently, conditions involve a combination of these hazards. Examples are: (1) radioactive materials and other chemicals, in the same work area, that present potential radiological and chemical hazards, (2) hazardous chemicals that could adversely affect radiological safety or could be released from the processing of radioactive materials, and (3) a fire or explosion hazard that could cause a release of radioactive material and other hazardous chemicals.

In general, NRC will apply its standards to working conditions involving radiological hazards, OSHA will apply its standards to working conditions involving non-radiological hazards, and both agencies will apply their standards to conditions involving a combination of hazards. NRC and OSHA will coordinate their efforts as specified in this memorandum.

IV. NRC Responsibilities

NRC is responsible for certifying two leased GDPs, as mandated by the Act and other applicable statutes. NRC will conduct compliance certification in accordance with 10 CFR Part 76. This will include regulation of radiological hazards and any other hazards that may affect radiological safety of the facilities.

NRC's responsibilities include protecting public health and safety, including workers, and protecting and safeguarding materials and plants in the interest of national security. Agency functions are performed through: standards-setting and rulemaking; technical reviews and studies; conduct of public hearings; issuance of compliance certificates; inspection, investigation and enforcement; and evaluation of operating experience.

V. OSHA Responsibilities

OSHA is responsible for administering the requirements established under the OSH Act and OSHA standards. Under the OSH Act, employers have a general duty to furnish each employee with a place of employment that is free from recognized hazards that can cause death or serious physical harm and to comply with all OSHA standards, rules, and regulations. OSHA standards contain requirements designed to protect employees against workplace hazards. Under the OSH

Act, OSHA is authorized among other things to conduct workplace health and safety inspections, including inspections in response to employee complaints, and to issue citations and conduct enforcement actions.

Section 1312 of the Energy Policy Act contains certain exceptions to the OSH Act as applied to USEC. The USEC Privatization Act deleted these exceptions with respect to application of the OSH Act to a private corporation which succeeds USEC.

VI. Implementation

In recognition of the agencies' authorities and responsibilities enumerated above, the following procedures will be followed:

A. NRC will apply its standards in inspection and enforcement of working conditions involving radiological hazards or combined hazards as described in Paragraph III. OSHA will apply its standards in inspection and enforcement of working conditions involving non-radiological hazards or combined hazards as described in Paragraph III. OSHA will not normally conduct enforcement actions with regard to GDP working conditions that involve solely radiological hazards.

B. It is not intended that either agency will in any way be restricted from regulating safety within their respective jurisdictions. If NRC or OSHA identifies, or is notified by the operator of, a conflict between NRC and OSHA requirements, both agencies will work together to resolve the concern promptly.

C. NRC has established a permanent site office and assigned full-time inspectors at each GDP, and plans to continue this arrangement for the foreseeable future. The results of NRC inspections will be provided to OSHA on request, subject to applicable procedures to protect classified and proprietary information. The information will also be available in NRC local public document rooms, and available to GDP workers on request, except for any portions containing classified, proprietary, private, or other information withheld from the public in accordance with applicable laws and regulations. NRC resident inspectors will also be available to discuss working conditions with workers.

D. Although NRC does not conduct inspections exclusively focused on non-radiological safety, in the course of inspections related to radiological hazards or combined hazards, NRC personnel may identify non-radiological worker safety concerns. NRC will bring the identified matters to the attention of GDP management. Significant worker safety concerns will be documented in writing and made available as specified in Paragraph VI.C. In addition, OSHA will be informed as follows:

1. *Referral to OSHA of Hazards Identified by NRC.* If non-radiological worker safety concerns are identified by NRC, or if USEC demonstrates a pattern of unresponsiveness to non-radiological worker safety concerns identified by others, NRC will inform the appropriate OSHA Regional Office.

2. *Referral to OSHA of Worker Safety and Health Complaints.* NRC will refer worker safety or health complaints, related to non-radiological or combined hazards, to the appropriate OSHA Regional Office in accordance with existing NRC procedures. These procedures provide for protection of the identity of the complainant to the extent feasible.

E. To the extent practicable, OSHA inspectors will inform the NRC Site Office, on arrival on site, of OSHA inspections in areas where combined radiological and non-radiological hazards are present as described in Paragraph III. Findings from such inspections will be shared and coordinated with NRC.

F. OSHA Regional Offices will inform the NRC Region III Office or Site Office of matters related to radiological hazards or combined hazards, when such matters come to their attention during inspections or through complaints. Workers' complaints falling within NRC jurisdiction will be handled by NRC in accordance with existing procedures.

G. Worker representatives may accompany NRC inspectors on inspections of working conditions as provided in 10 CFR Part 19. Worker representatives may accompany OSHA inspectors as provided in 29 CFR Part 1903.

H. The employee protection provisions in Section 211 of the Energy Reorganization Act of 1974, as amended, 10 CFR Part 76.7, and Section 11 (c) of the OSH Act are applicable to employees of USEC and contractors at its administered facilities.

I. In recognition of the fact that both NRC and OSHA will conduct inspections in areas where combined hazards are present, OSHA will provide NRC personnel with basic chemical and industrial safety training in OSHA safety standards, consistent with ongoing OSHA training programs and resource constraints. Also, NRC will provide OSHA personnel with training in basic radiation safety requirements, consistent with ongoing NRC training programs and resource constraints. Details of such training will be as mutually agreed to by the NRC Technical Training Center and the OSHA National Training Institute.

VII. Enforcement

A. Each agency will conduct an inspection and enforcement program within its responsibilities as warranted.

B. Each agency will take enforcement actions as it deems appropriate within the limits of its authorities. Upon completion of any NRC and/or OSHA inspections/investigations associated with the same set of facts or the same incident for which either agency intends to take enforcement action, NRC and OSHA will consult with each other on the results of their respective inspections and will jointly define the scope of enforcement actions to minimize duplicative enforcement actions and preclude duplicative civil penalties.

VIII. Contacts

NRC and OSHA will designate appropriate contacts for implementation of this memorandum. A list of OSHA contacts will be provided to the Director, Office of Nuclear Material Safety and Safeguards, NRC. A list of NRC contacts will be provided to the Director of Policy, OSHA.

IX. Effective Date, Revision, and Termination

This memorandum shall be effective upon signature by authorized representatives of the respective agencies, and shall continue in effect until revised by mutual agreement, unless terminated by either party upon 120 days notice in writing.

For the Nuclear Regulatory Commission.

Dated: July 26, 1996.

James M. Taylor,

Executive Director for Operations.

For the Occupational Safety and Health Administration.

Dated: July 26, 1996.

Joseph A. Dear,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 96–19609 Filed 7–31–96; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Presidential Libraries

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Presidential Libraries. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Presidential Libraries in NARA's ceiling of discretionary advisory committees. The Committee Management Secretariat, General Services Administration, also concurred with the renewal of the Advisory Committee on Presidential Libraries in correspondence dated June 21, 1996.

The Archivist of the United States has determined that the renewal of the Advisory Committee is in the public interest due to the expertise and valuable advice the Committee members provide on issues affecting the functioning of existing Presidential libraries and library programs and the development of future Presidential libraries. NARA will use the Committee's recommendations in our implementation of strategies for the efficient operation of the Presidential libraries.

Dated: July 24, 1996.

L. Reynolds Cahoon,

NARA Committee Management Officer.

[FR Doc. 96–19590 Filed 7–31–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: August 28, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 360 and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Sara Nerlove, SBIR Program Director, SBIR Office, Darryl Gorman, SBIR Program Director, SBIR Office, (703) 306–1391, Gil Devey, Program Officer, Biomedical Engineering (703) 306–1319, Liselotte Schioler, Program Officer, Materials Research, (703) 306–1836, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR phase I proposals concerning Materials Research, Diamond Related Materials, Bioengineering and Environmental Systems—Biomedical Engineering and Aiding the Disabled (BMEAD) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19579 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: August 21, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed

Contact Person: Dr. Darryl Gorman, SBIR Program Director, SBIR Office, (703) 306–1391, Liselotte Schioler, Program Officer, Materials Research, (703) 306–1836, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Materials Research: Photonics as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19581 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: August 19, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ritchie Coryell, SBIR Program Director, SBIR Office, (703) 306–1391, Rodger Baier, Program Officer, Ocean Sciences, Geosciences, (703) 306–1589, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Ocean Science as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19582 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: August 16, 1996, 8:30 a.m.–5:00 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George Patrick Johnson, SBIR Program Director, SBIR Office, (703) 306–1391, Shi Chi Liu, Program Officer, ENG/CMS, (703) 306–1362, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Civil Mechanical Systems, Mitigation as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19583 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194)

Date and Time: August 26, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 360 and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed

Contact Person: Sara Nerlove, SBIR Program Director, SBIR Office, George Patrick Johnson, SBIR Program Director, SBIR Office, (703) 306–1391, George Vermont and William Weigand, Program Officers, Bioengineering and Environmental Systems (703) 306–1318, Devendra P. Garg, Program Officer, Civil and Mechanical Systems,

Engineering, (703) 306–1361, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR Phase I proposals concerning Dynamic Systems and Control and Biochemical Engineering and Biotechnology as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19584 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Earth Sciences. (1756)

Date and Time: August 26–August 28, 1996; 8:30 am to 6:00 pm.

Place: Southern California Earthquake Center, California Institute of Technology.

Type of Meeting: Closed.

Contact Person: Dr. James H. Whitcomb, Program Director, Geophysics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556.

Purpose of Meeting: To review the renewal proposal, evaluate the Science and Technology Center, and make a recommendation concerning future funding of the Science and Technology Center.

Agenda: To evaluate (a) the research program; (b) educational and outreach activities; and (c) the knowledge transfer activities and the management of the STC. To make a recommendation on the future funding of the STC.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19580 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (DMR).

Date	Time	Place
August 21, 1996	7:00 a.m.–9:00 p.m.	South Coast Inn, (Meeting Room), Goleta, CA.
August 22, 1996	8:00 a.m.–5:00 p.m.	University of California, Santa Barbara, CA 93106.

Type of Meeting: Closed.

Contact Person: Dr. LaVerne D. Hess, Program Director, Electronic Materials Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1837.

Purpose of Meeting: To provide advice and recommendations concerning support for the Science and Technology Center (STC) for Quantized Electronic Structures (QUEST) at the University of California, Santa Barbara.

Agenda: To evaluate progress at this Science and Technology Center in relation to continuing support.

Reason for Closing: The project being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 29, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–19585 Filed 7–31–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Formation of Working Group To Review Incidents Involving Stolen Industrial Radiography Equipment

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of formation of working group.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), with the Organization of Agreement States, is forming a working group to review the issues related to incidents involving stolen radiography equipment.

FOR INFORMATION CONTACT: Jim Myers, Office of State Programs, Mail Stop OWFN–3–D–23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301–415–2328. Internet: JHM@NRC.GOV.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC), with the Organization of Agreement States, is forming a working group to review the issues related to incidents involving stolen radiography equipment. The initiating event involved Larpen of Texas, a Texas licensee. The group's mission is to objectively review events involving stolen radiographic equipment and provide recommendations for preventing similar events. The working group's first task will be to develop a charter governing the scope of work, type of products, a work schedule, and internal procedures.

WORKING GROUP ORGANIZATION: The working group consists of the following individuals: Jim Myers, NRC, Office of State Programs; Patricia Santiago, NRC, Office of Nuclear Material Safety and Safeguards; Brad Caskey, Texas; Walter Cofer, Florida; and Mike Henry, Louisiana. The group will be Co-Chaired by Jim Myers, NRC, and Brad Caskey, Texas.

WORKING GROUP MEETINGS: The working group will hold meetings and gather comments from regulatory agencies, the radiography industry, and interested members of the public. Maximum use will be made of other media for facilitating interaction between members of the working group, e.g., conference calls, facsimiles, and electronic mail. Working group meetings will be open to the public and will be held in the Washington, D.C. area, or other locations as agreed upon by the working group members. Individuals attending working group meetings are welcome to provide

comments to the working group's consideration orally, or in writing, at times specified by the working group, Co-Chairs. Seating at the working group meetings will be on a first-come, first-served basis.

MEETING ANNOUNCEMENTS: No meeting is scheduled at this time. Announcements for the first, and subsequent, meetings will be made through the NRC's Meeting Announcement system. The meeting announcement system can be reached three ways:

1. Voice: 800–952–9674.
2. Electronic Bulletin Board: 800–952–9676.
3. Electronic Bulletin Board at FedWorld: 800–303–9672.

Dated at Rockville, Maryland, this 23rd day of July, 1996.

For the U.S. Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 96–19587 Filed 7–31–96; 8:45 am]

BILLING CODE 7590–01–P

Proposed Generic Communication; Primary Water Stress Corrosion Cracking of Control Rod Drive Mechanism and Other Vessel Head Penetrations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning primary water stress corrosion cracking in control rod drive mechanisms and other vessel head penetrations of nuclear power reactors. The purpose of the proposed generic letter is to (1) request that addressees describe their program for ensuring the timely inspection of PWR control rod drive mechanism (CRDM) and other vessel head penetrations and (2) require that all addressees provide to the NRC a written response to this generic letter. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter was endorsed by the Committee to Review Generic Requirements (CRGR) on July 25, 1996. The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires September 3, 1996. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: C. E. (Gene) Carpenter (301) 415–2169.

SUPPLEMENTARY INFORMATION:

Generic Letter 96–##: Primary Water Stress Corrosion Cracking of Control Rod Drive Mechanism and Other Vessel Head Penetrations (TACS No. M95280)

Addressees

All holders of operating licenses for pressurized water reactors (PWRs), except those licenses that have been amended to possession-only status.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to (1) request addressees to describe their program for ensuring the timely inspection of PWR control rod drive mechanism (CRDM) and other vessel head penetrations and (2) require that all addressees provide to the NRC a written response to this generic letter relating to the requested information.

Background

Most PWRs have Alloy 600 CRDM nozzle and other vessel head penetrations (VHPs) that extend above the reactor pressure vessel head. The stainless steel housing of the CRDM is screwed and seal-welded onto the top of the nozzle penetration, as shown in Figure 1. The weld between the nozzle and the housing is a dissimilar metal weld, which is also called a bimetallic weld. The nozzles protrude below the vessel head, thus exposing the inside surface of the nozzles to reactor coolant. The control rod drive (CRD) nozzles and other VHPs are basically the same for all PWRs worldwide, which use a U.S. design (except in Germany and Russia).

Generally, there are 36 to 78 nozzles distributed over the low-alloy steel head. The vessel head is semi-spherical and the head penetrations are vertical so that the CRD nozzles and other VHPs are not perpendicular to the vessel surface except at the center. The uphill side (toward the center of the head) is called the 180-degree location and the downhill side (toward the outer periphery of the head) is called the 0-degree location. Most nozzles have a thermal sleeve with a conical guide at the bottom end and a small gap (3- to 4-mm) between the nozzle and the sleeve.

The NRC staff identified primary water stress corrosion cracking (PWSCC) as an emerging technical issue to the Commission in 1989, after cracking was noted in Alloy 600 pressurizer heater sleeve penetrations at a domestic PWR facility. Other leaks have occurred since 1986 in several Alloy 600 pressurizer instrument nozzles at both domestic and foreign reactors from several different nuclear steam supply system vendors. The NRC staff reviewed the safety significance of the cracking that occurred, as well as the repair and replacement activities at the affected facilities. The NRC staff determined that the cracking was not of immediate safety significance because the cracks were axial, had a low growth rate, were in a material with an extremely high flaw tolerance (high fracture toughness) and, accordingly, were unlikely to propagate very far. These factors also demonstrated that any cracking would result in detectable leakage and the opportunity to take corrective action before a penetration would fail. The NRC staff issued Information Notice 90–10, ''Primary Water Stress Corrosion Cracking (PWSCC) of Inconel 600,'' dated February 23, 1990, to inform the nuclear industry of the issue.

In December 1991, cracks were found in an Alloy 600 VHP in the reactor head at Bugey 3, a French PWR. Examinations in PWRs in France, Belgium, Switzerland, Sweden, Spain, and Japan have uncovered additional VHPs with axial cracks. About 2 percent of the VHPs examined to date contain short, axial cracks. Close examination of the VHP that leaked at Bugey 3 revealed very minor incipient secondary circumferential cracking of the VHP.

An action plan was implemented by the NRC staff in 1991 to address PWSCC of Alloy 600 VHPs at all U.S. PWRs. As explained more fully below, this action plan included a review of the safety

assessments by the PWR Owners Groups, the development of VHP mock-ups by the Electric Power Research Institute (EPRI), the qualification of inspectors on the VHP mock-ups by EPRI, the review of proposed generic acceptance criteria from the Nuclear Utility Management and Resource Council (NUMARC) [now the Nuclear Energy Institute (NEI)], and VHP inspections. As part of this action plan, the NRC staff met with the Westinghouse Owners Group (WOG) on January 7, 1992, the Combustion Engineering Owners Group (CEOG) on March 25, 1992, and the Babcock & Wilcox Owners Group (B&WOG) on May 12, 1992, to discuss their respective programs for investigating PWSCC of Alloy 600 and to assess the possibility of cracking of VHPs in their respective plants since all of the plants have Alloy 600 VHPs. Subsequently, the NRC staff asked NUMARC to coordinate future industry actions because the issue was applicable to all PWRs. Meetings were held withNUMARC/NEI and the PWR Owner's Groups on the issue on August 18 and November 20, 1992, March 3, 1993, December 1, 1994, and August 24, 1995. Summaries of these meetings are available in the Commission's Public Document Room, 2120 L Street, N.W., Washington, D.C. 20555.

Each of the PWR Owners Groups submitted safety assessments, dated February 1993, through NUMARC to the NRC on this issue. After reviewing the industry's safety assessments and examining the overseas inspection findings, the NRC staff concluded in a safety evaluation dated November 19, 1993, that VHP cracking was not an immediate safety concern. The bases for this conclusion were that if PWSCC occurred at VHPs (1) the cracks would be predominately axial in orientation, (2) the cracks would result in detectable leakage before catastrophic failure, and (3) the leakage would be detected during visual examinations performed as part of surveillance walkdown inspections before significant damage to the reactor vessel head would occur. In addition, the NRC staff had concerns related to unnecessary occupational radiation exposures associated with eddy current or other forms of nondestructive examinations (NDEs), if performed manually. Field experience in foreign countries has shown that occupational radiation exposures can be significantly reduced by using remotely controlled or automatic equipment to conduct the inspections.

In 1993, the nuclear industry developed remotely operated inservice inspection equipment and repair tools that reduced radiation exposure. Techniques and procedures developed by two vendors were successfully demonstrated in a blind qualification protocol developed and administered by the EPRI NDE Center. In the demonstrations, examinations by rotating and saber eddy current and ultrasonics showed a high probability of detection of the flaws which were also sized within reasonable uncertainty bounds. The qualification testing also demonstrated that personnel qualified through the EPRI program can reliably detect PWSCC in CRDM nozzles.

In 1994, circumferential intergranular attack (IGA) associated with the J-groove weld in one of the CRDM penetrations was discovered at Zorita, a Spanish reactor. This IGA is a different degradation mechanism than the PWSCC described above. It is believed to have resulted from the combination of ion exchange resin bed intrusions, which resulted in high concentrations of sulfates. Zorita has 37 CRDM penetrations, of which 20 are active penetrations and 17 are spare penetrations. Sixteen of the 17 spare penetrations showed stress corrosion cracking and IGA. The cracks were both axial and circumferential. Four of the active CRDM penetrations had significant cracking with axial and circumferential cracks. Two cation resin ingress events occurred at Zorita. In August 1980, 40 liters of cation resin entered the reactor coolant system (RCS). In September 1981, a mixed bed demineralizer screen failed and between 200 to 320 liters of resin entered the RCS. The coolant conductivity remained high for at least 4 months after the ingress. The increase in conductivity was attributed to locally high concentrations of sulfates. Sulfates were found around the crack areas and on the fracture surfaces. It is important to note that sulfate cracking can occur in regions that are not subject to significant applied or residual stresses.

The NRC staff issued Information Notice (IN) 96–11, ''Ingress of Demineralizer Resins Increases Potential for Stress Corrosion Cracking of Control Rod Drive Mechanism Penetrations,'' dated February 14, 1996, to alert addressees to the increased likelihood of sulfate-driven stress corrosion cracking of PWR CRDMs and other VHPs if demineralizer resins contaminate the RCS.

The Westinghouse staff notified the WOG plants, the B&WOG plants, and the CEOG plants of the Zorita incident by issuing NSAL–94–028. Westinghouse reported that no other plant had been found worldwide that had experienced cracking similar to that at the Zorita plant. The Westinghouse staff further reported that U.S. plants monitor RCS conductivity on a routine basis, follow the EPRI guidelines on primary water chemistry, and monitor for sulfate three times a week. The Westinghouse staff concluded that no immediate safety issue is involved and that the conclusions in its CRDM safety evaluation remain valid. The Westinghouse staff suggested that U.S. PWR plants review their RCS chemistry and other operating records pertaining to sulfur ingress events. The results of this review have not been reported to the NRC staff, and the NRC staff does not have sufficient information to ascertain whether any significant primary system resin bed intrusions have occurred at any U.S. PWR.

The first U.S. inspection of VHPs took place in the spring of 1994 at the Point Beach Nuclear Generating Station, and no indications were uncovered in any of its 49 CRDM penetrations. The eddy current inspection at the Oconee Nuclear Generating Station in the fall of 1994 revealed 20 indications in one penetration. Ultrasonic testing (UT) did not reveal the depth of these indications because they were shallow. UT cannot accurately size defects that are less than one mil deep (0.03 mm). These indications may be associated with the original fabrication and may not grow; however, they will be reexamined during the next refueling outage. A limited examination of eight in-core instrumentation penetrations conducted at the Palisades plant found no cracking. An examination of the CRDM penetrations at the D.C. Cook plant in the fall of 1994 revealed three clustered indications in one penetration. The indications were 46 mm, 16 mm, and 6 to 8 mm in length, and the deepest flaw was 6.8 mm deep. The tip of the 46-mm flaw was just below the J-groove weld.

Virginia Electric and Power Company inspected North Anna Unit 1 during its spring 1996 refueling outage. Some high-stress areas (e.g., upper and lower hillsides) were examined on each outer ring CRDM penetrations and no indications were observed using eddy current testing.

The NRC staff was informed during a meeting on August 24, 1995, that Westinghouse had developed a susceptibility model for VHPs based on a number of factors, including operating temperature, years of power operation, method of fabrication of the VHP, microstructure of the VHP, and the location of the VHP on the head. Each time a plant's VHPs are inspected, the inspection results are incorporated into the model. All domestic Westinghouse PWRs have been modeled and the ranking has been given to each licensee.

In addition, the NRC staff was informed that Framatome Technologies, Inc. [FTI, formerly Babcock & Wilcox (B&W)], also developed a susceptibility model for CRDM penetration nozzles and other VHPs in B&W reactor vessel designs. All domestic B&W PWRs have been modeled and the ranking has been given to each B&W licensee. The NRC staff was further informed that Combustion Engineering (CE) had performed an initial susceptibility assessment for the CE PWRs. At present, neither Westinghouse, FTI, nor CE has submitted its models and assessments to the NRC staff for review.

By letter dated March 5, 1996, NEI submitted a white paper entitled ''Alloy 600 RPV Head Penetration Primary Stress Corrosion Cracking,'' which reviews the significance of PWSCC in PWR VHPs and describes how the industry is managing the issue. The program outlined in the NEI white paper is based on the assumption that the issue is an economic one rather than a safety issue, and describes an economic decision tool to be used by PWR licensees to evaluate the probability of a VHP developing a crack or a through-wall leak during a plant's lifetime. This information would then be used by a PWR licensee to evaluate the need to conduct a VHP inspection at their plant. The NRC staff informed NEI in the several meetings listed above that it did not agree with NEI that the issue was only economic. Inspections have shown that cracking has initiated in some U.S. plants, and the industry has not provided sufficient technical justification regarding susceptibility of the CRDM and other VHPs to PWSCC to justify an inspection plan based on economic considerations alone.

Discussion

The results of domestic VHP inspections are consistent with the February 1993 analyses by the PWR Owners Groups, the NRC staff safety evaluation report dated November 19, 1993, and the PWSCC found in the CRDMs in European reactors. On the basis of the results of the first five inspections of U.S. PWRs, the PWR Owner's Groups' analyses, and the European experience, the NRC staff has determined that there is a high probability that VHPs at other plants may contain similar axial cracks caused by PWSCC. Further, if any significant resin intrusions have occurred at U.S. PWRs such as occurred at Zorita, residual stresses are sufficient to cause circumferential intergranular stress corrosion cracking (IGSCC).

After considering this information, the NRC staff has concluded that VHP cracking does not pose an immediate or near term safety concern. Further, the NRC staff recognizes that the scope and timing of inspections may vary for different plants depending on their individual suceptibility to this form of degradation. In the long term, however, degradation of the CRDM and other VHPs is an important safety consideration that warrants further evaluation. The vessel head provides the vital function of maintaining a reactor pressure boundary. Cracking in the VHPs has occurred and is expected to continue to occur as plants age. The NRC staff considers cracking of VHPs to be a safety concern for the long term based on the possibility of (1) exceeding the American Society of Mechanical Engineers (ASME) Code for margins if the cracks are sufficiently deep and continue to propagate during subsequent operating cycles, and (2) eliminating a layer of defense in depth for plant safety. Therefore, in order to verify that the margins required by the ASME Code, as specified in Section 50.55a of Title 10 of the Code of Federal Regulations (10 CFR 50.55a) are met, that the guidance of General Design Criterion 14 of Appendix A to 10 CFR Part 50 (10 CFR Part 50, Appendix A, GDC 14) is continued to be satisfied, and to ensure that the safety significance of VHP cracking remains low, the NRC staff believes that an integrated, long-term program, which includes periodic inspections and monitoring, is necessary. In addition, the NRC staff finds that the requested information is also needed to determine if the imposition of an augmented inspection program, pursuant to 10 CFR 50.55a(g)(6)(ii), is required to maintain public health and safety.

The NRC staff recognizes that individual PWR licensees may wish to determine their inspection activities based on an integrated industry inspection program (i.e., B&WOG, CEOG, WOG, or some subset thereof), to take advantage of inspection results from other plants that have similar susceptibilities. The NRC staff does not wish to discourage such group actions but notes that such an integrated industry inspection program must have a well-founded technical basis that justifies the relationship between the plants and the planned implementation schedule.

Required Information

The information required in items 1 and 2, below, is required by the NRC staff to determine if the imposition of an augmented inspection program is required, while the information required in item 3 relates to the potential for domestic resin intrusions, such as occurred at Zorita.

Addressees are required to provide the following information:

1. Regarding inspection activities:

1.1 A description of all inspections of CRDMs and other vessel head penetrations performed to the date of this generic letter, including the results of these inspections.

1.2 If you have developed a plan to periodically inspect the CRDM and other vessel head penetrations:

a. Your schedule for first, and subsequent, inspections of the CRDM and other vessel head penetrations, including the technical basis for your schedule.

b. Your scope for the CRDM and other vessel head penetration inspections, including whether you plan to inspect from the top or bottom of the head, the total number of penetrations (and how many will be inspected), and which penetrations have thermal sleeves, which are spares, and which are instrument or other penetrations.

1.3 If you have *not* developed a plan to periodically inspect the CRDM and other vessel head penetrations, provide your technical or safety basis for not periodically inspecting your VHPs; or, your schedule for developing such a plan and the basis for that schedule.

2. A description of the evaluation methods and results used to assess the susceptibility of the CRDM and other VHPs in your plant to PWSCC, including the susceptibility ranking of your plant and the factors used to determine this ranking. Other than or in addition to the boric acid visual examination (*see* Generic Letter 88–05, ''Boric Acid Corrosion of Carbon Steel Reactor Pressure Boundary Components in PWR Plants,'' dated March 17, 1988), include a description of all relevant data and/or tests used to develop crack initiation and crack growth models, and the methods and data used to validate these models. Include a statement explaining the applicability of these models to the VHP cracking issue. Also, if you are relying on any integrated industry inspection program, provide a detailed description of this program.

3. A description of any resin intrusions in your plant, as described in IN 96–11, that have exceeded the current EPRI PWR Primary Water Chemistry Guidelines recommendations for primary water sulfate levels, including the following information:

3.1 Were the intrusions cation, anion, or mixed bed?

3.2 What were the durations of these intrusions?

3.3 Do your RCS water chemistry Technical Specifications follow the EPRI guidelines?

3.4 Identify any RCS chemistry excursions that exceed your plant administrative limits for the following species: sulfates, chlorides or fluorides, oxygen, boron, and lithium.

3.5 Identify any conductivity excursions which may be indicative of resin intrusions, provide your technical assessment of each excursion and your followup actions.

3.6 Provide your assessment of the potential for any of these intrusions to result in a significant increase in the probability for IGA of VHPs and any associated plan for inspections.

Required Response

All addressees shall submit in writing the information identified above within 90 days from the date of this letter.

Any inspection results that do *not* satisfy the acceptance criteria identified in the NRC staff's safety assessment dated November 16, 1993, should be reported to the NRC staff prior to plant restart.

Address the required written reports to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, under oath or affirmation under the provisions of Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy to the appropriate regional administrator.

The NRC recognizes the potential difficulties (number and types of sources, age of records, proprietary data, etc.) that licensees may encounter while ascertaining whether they have all of the data pertinent to the evaluation of their CRDMs and other vessel head penetrations. For this reason, the above time periods are allowed for the responses.

Related Generic Communications

(1) Information Notice 90–10, ''Primary Water Stress Corrosion Cracking (PWSCC) of Inconel 600,'' dated February 23, 1990.

(2) NUREG/CR–6245, ''Assessment of Pressurized Water Reactor Control Rod Drive Mechanism Nozzle Cracking,'' dated October 1994.

(3) Information Notice 96–11, ''Ingress of Demineralizer Resins Increases Potential for Stress Corrosion Cracking of Control Rod Drive Mechanism Penetrations,'' dated February 14, 1996.

Backfit Discussion

This generic letter only requires information from the addressees under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Therefore, the staff has not performed a backfit analysis. The information collected will enable the staff to verify that the margins required by the ASME Code, as specified in Section 50.55a of Title 10 of the *Code of Federal Regulations* (10 CFR 50.55a) are met, that the guidance of General Design Criterion 14 of Appendix A to 10 CFR Part 50 (10 CFR Part 50, Appendix A, GDC 14) continues to be satisfied, and to ensure that the safety significance of VHP cracking remains low, the NRC staff requires licensees to submit information to assess compliance with the above stated requirements. The NRC staff finds that the requested information is also needed to determine if the imposition of an augmented inspection program, pursuant to 10 CFR 50.55a(g)(6)(ii), is required to maintain public health and safety. The staff is not establishing a new position for such compliance in this generic letter. Therefore, this generic letter does not constitute a backfit and no documented evaluation or backfit analysis need be prepared.

Dated at Rockville, Maryland, this 26th day of July, 1996.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

BILLING CODE 7590–01–P

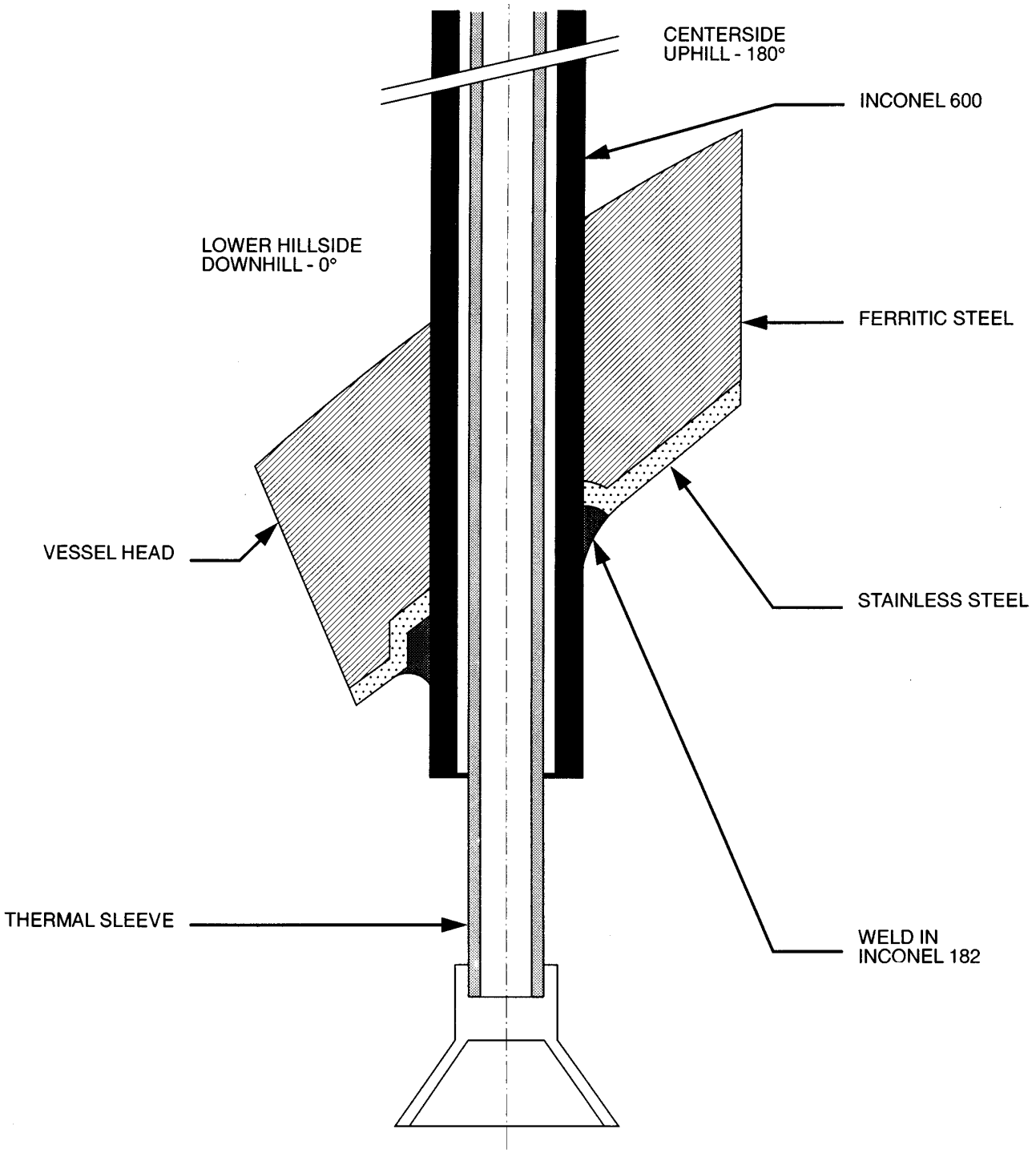

Figure 1. Head Penetration and Vessel Assembly

[FR Doc. 96–19588 Filed 7–31–96; 8:45 am]
BILLING CODE 7590–01–C

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Existing Collection of Information: Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235-new

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summary of collection for public comment.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (''Exchange Act'') is intended to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on, or admitted to unlisted trading privileges, on a national securities exchange to mark the relevant order ticket either ''long'' or ''short.''

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these respondents for the purposes of calculating the reporting burden under Rule 10a–1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges, on a national securities exchange. In addition, each respondent makes an estimated 55,663 annual responses, for an aggregate total of 83,493,861 responses per year. Each response takes approximately .000143 hours to complete. Thus, the total compliance burden per year is 11,902 burden hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and calrity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: July 22, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19568 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22103; No. 812–9692]

ITT Hartford Life and Annuity Insurance Company, et. al.

July 26, 1996.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: ITT Hartford Life and Annuity Insurance Company (''ITT Hartford''), Separate Account VL I of ITT Hartford Life and Annuity Insurance Company (the ''Account''), and Hartford Equity Sales Company (''HESCO'').

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 6(c) of the 1940 Act granting exemptions from Section 27(a)(3) thereof and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit ITT Hartford, through the Account, to issue certain flexible premium variable life insurance contracts (''Contracts'') that provide for a front-end sales loan on premium payments in any given contract year up to a maximum amount (''Maximum Sales Load Premium'') and no sales load on premiums in excess of such Maximum Sales Load Premium (''Excess Premiums'') in any given contract year. Applicants also request exemptive relief to permit ITT Hartford, though separate accounts it establishes in the future, to issue flexible premium variable life insurance contracts that are materially similar to the Contracts.

FILING DATE: The application was filed on July 26, 1995, and amended on June 6, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 20, 1996, and must 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Scott K. Richardson, Assistant Counsel, ITT Hartford Insurance Companies, P.O. Box 2999, Hartford, Connecticut 06104–2999.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. ITT Hartford is a stock life insurance company engaged in the business of writing annuities and both individual and group life insurance in the District of Columbia and all states except New York. ITT Hartford is a wholly-owned subsidiary of Hartford Life Insurance Company.

2. The Account was established as a separate account of ITT Hartford on June 8, 1995, pursuant to the insurance law of the State of Connecticut. The Account is registered with the Commission pursuant to the 1940 Act as a unit investment trust. The Account presently consists of twenty-two subaccounts (''Subaccounts''), each of which will invest exclusively in certain open-end management investment companies.

3. HESCO, the principal underwriter for the Contracts, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible premium variable life insurance policies. Contract owners choose the amount of premiums

they intend to pay (''Scheduled Premiums'') within a range determined by ITT Hartford based on a variety of factors, including the face amount of the Contract, the insured's sex (except where unisex rates apply), age at issue, and risk classification. Contract owners also may pay other premiums at any time (''Unscheduled Premiums''), subject to certain restrictions. The cash value under a Contract will, and the death benefit may, increase or decrease depending on the investment experience of the Subaccounts to which the premium payments have been allocated.

5. The Guideline Annual Premium, as provided by Rule 6e–3(T)(c)(8)(i), is the level annual premium necessary to provide the future benefits under the Contract through maturity, based on certain specified assumptions, which include mortality charges based on the 1980 Commissioners' Standard Ordinary Mortality Smoker or Non-Smoker Table, age last birthday, and assured annual net rate of return of at least 5 percent per year, and a reduction of the guaranteed fees and changes specified in the policy.

6. During a period which begins on the date the Contract is effective and continues for one to ten years as selected by the Contract owner (''Guarantee Period''), ITT Hartford will guarantee that the Contract will not lapse, regardless of the investment experience of the Subaccounts, if the Contract owner pays the Scheduled Premiums when due. In addition, Unscheduled Premiums will be allowed during the Guarantee Period. If the Contract owner does not pay all Scheduled Premiums during the Guarantee period, the Contract will stay in force as long as an amount calculated under the Contract exceeds the indebtedness under the Contract.

7. The Contracts provide for the payment of a death benefit to the beneficiary when the insured dies. The death benefit equals the death benefit less any indebtedness under the Contract and any due and unpaid monthly deduction amount occurring during a grace period.

8. ITT Hartford deducts a sales load from premium payments prior to allocating them to the account value of a Contract. The amount of the deduction is calculated using a percentage of the premiums paid during each Contract year, as specified in the Contract. The amount of the front-end sales load will be based on the amount of the Scheduled Premiums for the Contract, the Guarantee Period, and any Unscheduled Premiums paid. The maximum front-end sales load applied to any premium in the first Contract year will be 50 percent of the amount of premiums paid during the first Contract year, subject to the limits described below. Also subject to certain limits, the maximum front-end sales load in a Contract year will be 11 percent of premiums paid during Contract years two through ten and 3 percent of premiums paid in Contract years eleven and beyond.

9. No front-end sales load in excess of the Guideline Annual Premium will be imposed under the Contracts on premium payments in any Contract year. In the first Contract year, no sales load will be imposed on premiums that exceed the Scheduled Premium, if it is less than the Guideline Annual Premium. The maximum amount of a premium payment subject to a front-end sales load is the ''Maximum Sales Load Premium.''

10. A contingent deferred sales charge will be assessed against the account value of a Contract prior to a lapse or surrender if the Contract lapses or is surrendered within the first nine years (''Surrender Charge''). The amount of the Surrender Charge applicable to the first Contract year under a Contract will be established by ITT Hartford and will decrease by an equal amount each Contract year until it reaches zero during the tenth year. Generally, the shorter the Guarantee Period under a Contract, the lower the Surrender Charge that will apply to the Contract.

11. The aggregate of the front-end sales load and Surrender Charge assessed will not exceed 180 percent of the Guideline Annual Premium, or nine percent of the sum of the Guideline Annual Premium that would be paid over a twenty year period. In cases where the anticipated life expectancy of the insured named in the Contract is less than twenty years, the total sales load will be reduced to nine percent of the sum of the Guideline Annual Premium for the shorter period.

12. If a Contract is surrendered during the first two Contract years, the Contract owner may be entitled to a refund of some of the front-end sales load or Surrender Charge assessed. The refund will be equal to the excess, if any, of the actual front-end sales load and Surrender Charge assessed under the Contract over:

(a) the sum of 30 percent of the aggregate premium payments less than or equal to one Guideline Annual Premium plus 10 percent of such payments greater than one, but not more than two, Guideline Annual Premium(s); and

(b) 9 percent of each premium payment exceeding two Guideline Annual Premiums.

13. On a designated date each month, ITT Hartford will deduct from the account value, from the fixed account and each of the Subaccounts funding a Contract on a pro-rata basis, the following charges:

(a) a cost of insurance charge;

(b) a mortality and expense risk charge that varies proportionately from .90 percent of account value annually for a Contract with a one-year Guarantee Period to .60 percent for a Contract with a ten-year Guarantee Period;

(c) an administrative charge of $8.33 per month initially, guaranteed not to increase during the Guarantee Period, and guaranteed not to exceed $12.00 per month after the Guarantee Period;

(d) during the first Contract year, a monthly charge for underwriting and issuance costs of $8.33 per month, plus an amount that varies based on the age of the insured and the initial face amount of the Contract;

(e) a percentage of each premium to pay premium taxes, varying by locale, depending on tax rates in effect; [1]

(f) if applicable, charges for additional benefits provided by riders to the Contract; and

(g) if applicable, a charge for a special insurance class rating of the insured.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the 1940 Act, the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Section 27(a)(3) of the 1940 Act provides, in effect, that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate by any registered investment company issuing such certificates or any depositor or underwriter for such company may not exceed proportionately the amount deducted from any other such payment and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment (''stair-step'' provisions).

[1] Currently, no charge is assessed for Federal, state and local income taxes attributable to premiums, however ITT Hartford reserves the right to assess such a charge in the future.

3. Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii) provide exemptions from Section 27(a)(3), provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance contract from another plan of insurance.

4. Under the sales load structure of the Contracts, in any given year no front-end sales load will be deducted from premiums paid in excess of the Maximum Sales Load Premium. Thus, a Contract owner could pay a premium in any given Contract year from which no front-end sales load deduction is made (because cumulative premiums paid that year exceeded the Maximum Sales Load Premium), then pay the initial premium in the next Contract year from which a front-end sales load will be deducted. The exemptions from Section 27(a)(3) of the 1940 Act provided by Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii) do not appear to provide relief under these circumstances. Accordingly, pursuant to Section 6(c), Applicants request an exemption from the provisions of Section 27(a)(3) of the 1940 Act and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii) thereunder to the extent necessary to permit them to deduct sales charges from premiums paid pursuant to the Contracts in the manner described above.

5. Applicants assert that the sales load structure in the Contracts is designed to give Contract owners flexibility with respect to premium payments while permitting ITT Hartford to deduct only those charges deemed necessary to support the benefit guarantees under the Contracts. The sales load structure was designed to reflect ITT Hartford's operating expenses in connection with sales of the Contracts. Applicants submit that the deduction of a front-end sales load on only the premiums paid up to the Maximum Sales Load Premium does not implicate the policy concerns that underlie the stair-step provisions of Section 27(a)(3).

6. Applicants submit that ITT Hartford could avoid the stair-step issue simply by imposing the higher front-end sales load equally on premium payments up to the Maximum Sales Load Premium and on Excess Premiums, subject to the maximum permissible limits. Applicants assert that, while this sales load structure would qualify under the Rule 6e–3(T)(b)(13)(ii) exemption from Section 27(a)(3), it would be to the detriment of Contract owners, who benefit from the absence of a front-end sales load in connection with Excess Premiums.

7. Applicants assert that, in two letters responding to requests for no-action assurance, the Commission staff concluded that Section 27(a)(3), in conjunction with the other sales charge limitations in the 1940 Act, was designed to address the perceived abuse of periodic payment plan certificates that deducted large amounts of front-end sales charges so early in the life of the plan that investors redeeming in the early periods would recoup little of their investments. Applicants submit that the sales charge structure for the Contracts would not have this effect. On the contrary, by not imposing a front-end sales load on premiums paid in any Contract year in excess of the Maximum Sales Load Premium, Applicants assert that a greater proportion of the sales load charges will be deducted later than otherwise would be the case.

8. Applicants submit that one purpose behind Section 27(h)(3) of the 1940 Act, a provision similar to Section 27(a)(3), is to discourage unduly complicated sales charges. This may also be deemed to be a purpose of Section 27(a)(3) and Rule 6e–3(T)(b)(13)(ii). By limiting front-end sales charges to premiums up to the Maximum Sales Load Premium, Applicants submit that the sales charge structure under the Contracts is not unduly complicated.

9. Applicants also request exemptive relief to permit ITT Hartford, through separate accounts it establishes in the future, to issue flexible premium variable life insurance contracts that are materially similar to the Contracts. Applicants believe that, without such relief, they would have to apply for and obtain orders granting exemptive relief in connection with future contracts that are materially similar to the Contracts under similar circumstances.

10. Applicants submit that their request for exemptive relief for future separate accounts established by ITT Hartford would promote competitiveness in the variable life insurance contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19565 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22102; 812–10102]

LB Series Fund, Inc. et al.; Notice of Application

July 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: LB Series Fund, Inc., Lutheran Brotherhood Family of Funds (''LB Family of Funds''), Lutheran Brotherhood, Lutheran Brotherhood Research Corp., and all subsequently registered management investment companies advised by Lutheran Brotherhood or any entity under common control with Lutheran Brotherhood (together with the LB Series Funds and LB Family of Funds, the ''Funds'').

RELEVANT ACT SECTIONS: Order requested (a) under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder; (b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) of the Act; and (c) pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit each applicant investment company to establish deferred compensation plans for its trustees who are not interested persons of the company.

FILING DATES: The application was filed on April 23, 1996 and amended on July 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a

hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1996 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 the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Attorney, at (202) 942–0641, or Alison E. Baur, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of LB Series Fund and LB Family of Funds is a registered open-end management investment company. Lutheran Brotherhood, a fraternal benefit society owned and operated by its members, serves as investment advisor to each series of LB Series Fund. LB Research Corp. serves as investment adviser to each series of LB Family of Funds.

2. A majority of the board of directors of LB Series Fund and a majority of the board of trustees of LB Family of Funds (collectively, ''Trustees'') currently consists of Trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act. Each Trustee that is not an ''interested person'' of a Fund, receives an annual fee. No Trustees who is an affiliated person of Lutheran Brotherhood receives any remuneration from LB Series Fund or LB Family of Funds.

3. The proposed deferred fee arrangements would be implemented by means of a Deferred Compensation Plan (the ''Plan'') entered into by each Fund. The Plan would permit individual Trustees of a Fund who are not ''interested persons'' of such Fund to elect to defer receipt of all or a portion of their fees. This would enable the Trustees to defer payment of income taxes on such fees. The Trustees may amend the Plan from time to time. Such amendments will be consistent with any relief granted pursuant to this application and are limited to immaterial amendments or supplements, or amendments or supplements made to conform to any applicable law.

4. Under the Plan, the Trustee's deferred fees will be credited to a book entry account established by each participating Fund (the ''Deferred Fee Account'') as of the date such fees would have been paid to such Trustee. The value of the Deferred Fee Account will be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the ''Underlying Securities''). The Underlying Securities for a Deferred Fee Account will be shares of any of a selection of the Funds that the Trustees designates. The initial value of the Deferred Compensation credited to a Deferred Fee Account will be effected at the respective current net asset value of each Fund designated by the trustee and thereafter, the value of such Deferred Account will fluctuate as the net asset value of the shares of each such Fund fluctuates and will also reflect the value of the assumed reinvestment of dividends and capital gains distributions from each such Fund in additional shares of such Fund. Shares will not be designated as Underlying Securities, and Underlying Securities will not be purchased, if there is a material risk that the purchase of such shares would result in a violation of section 12(d)(1) of the Act.

5. As a matter of risk management, each Fund intends generally, and with respect to any money market Fund that values its assets by the amortized cost method undertakes, to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts of its Trustees. A Fund will either purchase its own shares or invest monies equal to the amount credited to the Deferred Fee Account as part of the general investment operations of the Fund.

6. The amounts paid to the Trustees under the Plan are expected to be *de minimis* in relation to the net assets of the Fund. The Plan provides that a Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from the Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of a Trustee to a Fund will be that of a general unsecured creditor. A Fund will be under no obligation to the Trustee to purchase, hold, or dispose of any investments but, if a Fund chooses to purchase investments to cover its obligations under the Plan, then any and all such investments will continue to be part of the general assets and property of the Fund.

7. Under the Plan, a Trustee may specify that the Trustee's deferred fees be distributed in whole or in part commencing on or as soon as practicable after a date specified by the Trustee, which may not be sooner than the earlier of (a) A date one year following the deferral election, or (b) the first business day of January following the year in which the Trustee ceases to be a member of the Board of Trustees of the Fund. Notwithstanding any elections by a Trustee, his or her deferrals under the Plan shall be distributed (x) in the event of the Trustee's death, or (y) upon: the dissolution, liquidation, or winding up of the Fund, whether voluntary or involuntary; the voluntary sale, conveyance or transfer of all or substantially all of the Fund's assets (unless the obligations of the Fund shall have been assumed by another Fund); or the merger of the Fund into another trust or corporation or its consolidation with one or more other trusts or corporations (unless the obligations of the Fund are assumed by such surviving entity and the surviving entity is another Fund). In addition, upon application by a Trustee and a determination by an administrator designated by the Trustees that such Trustee has suffered a severe and unanticipated financial hardship, the administrator shall distribute to the Trustee, in a single lump sum, an amount equal to the lesser of the amount needed by the Trustee to meet the hardship, or the balance of the Trustee's Deferred Fee Account. Payments will be made in a lump sum or in installments as elected by the Trustee. In the event of the Trustee's death, amounts payable under the Plan will be payable to the trustee's designated beneficiary. In all other events, the Trustee's right to receive payments will be nontransferable.

8. The Plan will not obligate any Fund to retain the services of a Trustee, nor will it obligate any Fund to pay any (or any particular level of) Trustee's fees to any Trustee. Rather, it will merely permit a Trustee to elect to defer receipt of all or part of the Trustee's fees which he or she would otherwise receive for future services from each Fund. The proposed arrangements will not affect the voting rights of the shareholders of any of the Funds. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote

such shares in proportion to the votes of all other holders of shares of such other Fund.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting relief from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder to the extent necessary to permit the Funds to enter into deferred fee arrangements with their Trustees; under sections 6(c) and 17(b) of the Act granting relief from section 17(a)(1) to the extent necessary to permit the Funds to sell securities issued by them to participating Funds; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to engage in certain joint transactions incident to such deferred fee arrangements.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan possesses none of the characteristics of senior securities that led Congress to enact these sections. The Plan would not: (a) Encourage increased borrowings by investment companies without adequate assets and reserves; (b) induce speculative investments or provide opportunities for manipulative allocation of any Fund's expenses or profits; (c) affect control of any Fund; (d) be inconsistent with the theory of mutuality of risk; or (e) confuse investors or convey a false impression as to the safety of their investments. All liabilities created by credits to the Deferred Fee Account under the Plan would be offset by equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

4. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Any relief granted from section 13(a)(3) of the Act would extend only to existing series of LB Series Fund with a fundamental investment restriction prohibiting the purchase of securities issued by investment companies (collectively, the ''Restriction Series''). Applicants submit that it is appropriate to exempt the Restriction Series from the provisions of 13(a)(3) as to enable the Restriction Series to invest in shares of other Funds pursuant to the Plan without a shareholder vote. Applicants state that the value of the Underlying Securities will be *de minimis* in relation to the total net assets of the Restriction Series, and will at all times equal the value of the Restrictions Series' obligations to pay deferred fees. Applicants will provide notice to shareholders in their statements of additional information of the deferred fee arrangements with the Trustees.

5. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would set forth any restrictions on transferability or negotiability, and such restrictions are primarily to benefit the participating trustees and would not adversely affect the interests of the Trustees, the Fund or any shareholder of any Fund.

6. Section 22(g) generally prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants submit that the Plan would provide for deferral of payment of fees that would be payable independent of the Plan, and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

7. Rule 2a–7 imposes certain restrictions on the investments of money market funds that use the amortized cost method or the penny-rounding method of computing their per share price. This would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements would not affect net asset value. Applicants further assert that the amounts involved in all cases would be *de minimis* in relation to the total net assets of each Fund, and would have no effect on the per share net asset value of the Funds.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Funds that are advised by the same entity may be ''affiliated persons'' of one another under section 2(a)(3)(C) of the Act by reason of being under the common control of their adviser. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that an exemption from this provision would not implicate Congress' concerns in enacting section 17(a)(1), but would facilitate the matching of each Fund's liability for deferred Trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of sections 6(c) and 17(b).

10. Section 17(d) and rule 17d–1 generally prohibit a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement on a basis different from or less advantageous than that of the affiliated person. Applicants assert that any adjustments made to the Deferred Fee Accounts to reflect the income, gain or loss on investments of the assets of a Fund would be identical in amount to income gain or loss by a shareholder of the same Fund whose shares were not held in the Deferred Fee Account. The Trustee would neither directly or indirectly receive a benefit which would otherwise inure to the Funds or their shareholders. Deferral of a Trustee's fees in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another,in the same position as if fees were paid on a current basis. When all payments have been made to a participating Trustee, the participating Trustee would be no better off (apart from the effect of tax deferral) than if he or she had received deferred fees on a

current basis and invested them in shares of the Underlying Securities.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19566 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22100; 811–6335]

Quest For Value Global Funds, Inc.; Notice of Application

July 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Quest For Value Global Funds, Inc. (the ''Fund'').

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicants request an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on May 6, 1996 and amended on June 16, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1996, 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 5th Street, N.W., Washington, DC 20549. Applicant, One World Financial Center, New York, NY 10281.

FOR FURTHER INFORMATION CONTACT: Suzanne Krudys, Senior Counsel, at (202) 942–0641, or Alison E. Baur, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a registered open-end investment company, was organized as a Maryland corporation on June 12, 1991. On June 19, 1991, the Fund registered under the Act on Form N–8A and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement was declared effective on August 23, 1991 and applicant commenced its public offering of shares on December 2, 1991.

2. At a meeting held on June 22, 1995, the applicant's Board of Directors adopted and recommended an Agreement and Plan of Reorganization (the ''Agreement''). The Agreement provided that applicant would transfer its assets to Oppenheimer Strategic Income Fund (''SIF''), a series of Oppenheimer Strategic Funds Trust (''Trust''), in exchange for shares of SIF.

3. Also at this meeting, the applicant's directors determined that the reorganization of the Fund would be in the best interests of the shareholders of the Fund and that no shareholder's interest would be diluted as a consequence thereof.

4. A proxy statement was filed with the Commission and mailed to shareholders in connection with the solicitation by the applicant's Board of Directors of proxies for the purpose of voting on the Reorganization Plan. At a meeting held on November 16, 1995, the shareholders approved the Agreement.

5. The reorganization of the Fund with SIF closed on November 24, 1995 (the ''Closing Date''). Pursuant to the Reorganization Plan, all of the assets of the Fund less a cash reserve and net of any liability for outstanding shareholder redemptions were transferred to SIF in exchange for shares of SIF. The asset transfer in exchange for shares of SIF was based on the relative net asset value of applicant's shares. Following the exchange, applicant distributed the SIF shares to each of its shareholders on a *pro rata* basis.

6. The cost of printing and mailing the proxies and proxy statements, and the cost of the tax opinion, were divided between Oppenheimer Capital, applicant's investment adviser, and OppenheimerFunds, Inc., manager of the Trust. Any other out-of-pocket expenses of the Fund, including legal, accounting and transfer agent expenses, were borne by Oppenheimer Capital. Expenses incurred with respect to documents included in the mailing to SIF's shareholders were borne by SIF. Any other out-of-pocket expenses of SIF, including legal, accounting and transfer agent expenses, were borne by OppenheimerFunds Inc.

7. At the time of filing the application, applicant's only assets remaining are $2,341.00 in cash. The cash retained represents an estimate of the total outstanding invoices which remain unbilled.

8. Applicant has no shareholders as of the time of filing the application and is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19529 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22104; 812–9100]

Scudder Global Fund, Inc., et al; Notice of Application

July 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

SUMMARY: Scudder Global Fund, Inc., Scudder International Fund, Inc., Scudder Mutual Funds, Inc., Scudder Equity Trust, Scudder Investment Trust, Scudder Funds Trust, Scudder Portfolio Trust, Scudder Securities Trust, Scudder GNMA Fund, Scudder Cash Investment Trust, Scudder Pathway Series (''Pathway Series,'' collectively the foregoing are the ''Scudder Funds''), Scudder, Stevens & Clark, Inc. (''SSC''), Scudder Service Corporation (''Scudder Service''), Scudder Investor Services, Inc. (''SIS''), Scudder Trust Company

(''STC''), and Scudder Fund Accounting Corporation (''SFAC''), and Scudder Fund Accounting Corporation (''SFAC'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) to exempt the applicants from sections 12(d)(1) (A) and (B), sections 6(c) and 17(b) to exempt applicants from section 17(a), and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would permit the Pathway Series to operate as a ''fund of funds.''

FILING DATES: The application was filed on October 24, 1994, and amended on January 27, 1995, June 6, 1996, and July 24, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 1996, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Scudder Global Fund, Inc., Scudder International Fund, Inc., and Scudder Mutual Funds, Inc., 345 Park Avenue, New York, New York 10154–0010 and Scudder Equity Trust, Scudder Investment Trust, Scudder Funds Trust, Scudder Portfolio Trust, Scudder Securities Trust, Scudder GNMA Fund, Scudder Cash Investment Trust, Pathway Series, SSC, Scudder Service, SIS, STC, and SFAC, Two International Place, Boston, Massachusetts 02110–4103.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, 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.

Applicant's Representations

1. The Pathway Series is a registered, No-load, open-end, management investment company organized as a Massachusetts business trust. The Pathway Series will initially consist of six portfolios. Each Portfolio will invest substantially all of its assets in certain Scudder Funds (the ''Underlying Funds''). The Underlying Funds are no-load, open-end investment companies which have not adopted plans under rule 12b–1 to finance their distribution and, in some cases, are organized as series investment companies. Applicants request that the relief sought herein also apply to any future open-end management investment company or series thereof, which is advised by SSC or distributed by SIS which are part of the same group of investment companies as defined in rule 11a–3 under the Act (such funds are also the ''Scudder Funds'').

2. SSC serves as the investment adviser to each of the Scudder Funds. SIS serves as principal underwriter of the Scudder Funds. Scudder Service performs certain shareholder services for the Scudder Funds. SFAC provides fund accounting services for certain Scudder Funds. STC provides recordkeeping services with respect to certain shares of the Scudder Funds. SIS, SFAC, STC, and Scudder Service are all subsidiaries of SSC.

3. Applicants propose that, subject to the conditions to the requested order, the Pathway Series be permitted to purchase and redeem shares of the Underlying Portfolios, and that each Underlying Portfolio be permitted to sell and redeem shares from each of the Pathway Series. The Pathway Series will invest almost exclusively in shares of Underlying Funds.

4. SSC does not currently intend to charge an additional advisory fee for the Pathway Series, earning only those advisory fees accruing to the Underlying Fund holdings. As currently contemplated, the Pathway Series will be sold on a no-load basis and without rule 12b–1 fees, although the Pathway Series and the Underlying Funds may charge sales loads or service fees in the future. It is also currently contemplated that all other expenses (shareholder servicing, legal, accounting, etc.) will be paid for in accordance with a special servicing agreement (''Agreement'') to be entered into between SSC, SIS, Scudder Service, STC, SFAC, the Pathway Series, and the Underlying Funds.

5. Under the Agreement, SSC will arrange for all of the services pertaining to the operation of the Pathway Series. In addition, the Agreement will provide that, if the officers of any Underlying Fund, at the direction of its board of director/trustees, determine that the aggregate expenses of the Pathway Series are less than the estimated savings to the Underlying Fund from the operation of the Pathway Series, the Underlying Fund will bear those expenses in proportion to the average daily value of its shares owned by each Pathway Series portfolio, provided that no Underlying Fund bears expenses in excess of the estimated savings to it. In the event that the aggregate financial benefits to the Underlying Funds do not exceed the costs of the Pathway Series, the Agreement will provide either that SSC or the Pathway Series will bear that portion of costs determined to be greater than the benefits. The determination of whether and the extent to which the benefits to the Underlying Funds from the organization and operation of the Pathway Series will exceed the costs to the Underlying Funds will be made based on an analysis described in the application. The board of directors/trustees for each Underlying Fund, prior to authorizing its fund to be a party to the Agreement, will review and approve this analysis, and afterwards, upon annual review of the Agreement, determine its continued appropriateness for each Underlying Fund. If the Pathway Series determines not to enter into the Agreement, it will bear its own expenses in connection with fund operations and separately contract with various service providers.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) for an exemption from section 17(a), and pursuant to section 17(d) and rule 17d–1 under the Act to permit the Funds to enter into the Agreement, which would otherwise be prohibited by section 17(d) and rule 17d–1. The requested relief would permit the Pathway Series to acquire up to 100% of the voting shares of any Underlying Fund.

2. Section 12(d)(1)(A) of the Act would prohibit the Pathway Series from purchasing more than 3% of the outstanding voting securities of an Underlying Fund, securities issued by all Underlying Funds having an aggregate value in excess of 5% of the value of the total assets of the Pathway Series, or securities issued by the Underlying Funds and all other investment companies having an aggregate value in excess of 10% of the value of the total assets of the Pathway Series. Section 12(d)(1)(B) would prohibit the Underling Funds from selling more than 3% of their outstanding voting securities to the Pathway Series and more than 10% to

the Pathway Series and other investment companies.

3. Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

4. Section 12(d)(1) is intended to prevent the pyramiding of investment companies, the layering of fees, and undue organizational complexities. Applicants state that none of these abuses associated with fund holding companies are present with respect to the proposed arrangement, and that the Pathway Series will provide the benefits of diversification and cost savings to its investors.

5. Applicants believe that the concern over potential large scale redemptions is not present in the context of the Funds. Because the Pathway Series will only acquire shares of Underlying Funds that are in the Scudder family of funds, a redemption from one Underlying Fund will simply lead to the investment of the proceeds in another Underlying Fund. Applicants also believe that the proposed arrangement will not result in disruptive redemptions because the Pathway Series will be designed for long-term investors. This will reduce the possibility of the Pathway Series being used as short-term trading vehicles and further protect the Pathway Series and the Underlying Funds from unexpected large redemptions.

6. While applicants currently do not anticipate that the Pathway Series will be subject to sales loads, distribution fees, or shareholder servicing fees, any sales charges or service fees relating to the shares of the Pathway Series will not exceed the limits set forth in Article III, section 26 of the NASD's Rules of Fair Practice, when aggregated with any sales charges or service fees that the Pathway Series may pay relating to the Underlying Portfolio shares. The aggregate sales charges at both levels, therefore, will not exceed the limit that otherwise lawfully could be charged at any single level.

7. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. The sale by the Underlying Funds of their shares to the Pathway Series could be deemed to be a principal transaction between affiliated persons that are prohibited under section 17(a). Because the Pathway Series and the Underlying Funds are each advised by SSC they could be deemed to be affiliates of one another. Therefore, applicants request an order to permit the Underlying Funds to sell their shares to the Pathway Series.

8. Section 17(b) permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. Section 17(b) could be interpreted to exempt only a single transaction. However, the Commission, under section 6(c) of the Act, may exempt a series of transactions that otherwide would be prohibited by section 17(a). Applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

9. Section 17(d) of the Act and rule 17d–1 thereunder prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. The Agreement contemplates the Pathway Series, the Underlying Funds, and various other affiliated ''Scudder'' entities may jointly participate in an arrangement whereby the fees and expenses of operating the Pathway Series would be shared among the Underlying Funds or, in certain cases, borne by SSC. Accordingly, the arrangements contemplated by the Agreement could be viewed as constituting a ''joint or joint and several participation.'' Accordingly, applicants request relief under section 17(d) and rule 17d–1 to permit the Pathway Series to enter into the Agreement.

10. Rule 17d–1 permits the SEC to approve a proposed joint transaction. In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants believe that the requested relief meets these standards.

11. The Pathway Series and all of the Underlying Funds will participate in the arrangement on the same, or substantially the same, basis. Under the Agreement, each Underlying Fund and all Underlying Funds in the aggregate will bear the expenses of the Pathway Series only to the extent that such expenses are less than the benefits of the Pathway Series to the Underlying Funds. The payment of Pathway Series expenses by any Underlying Fund will be subject to review and approval by that Fund's board of directors/trustees, including a majority of an Underlying Fund's independent directors/trustees. Shareholders of the Pathway Series will be on the same footing as shareholders of the Underlying Funds in that their proportionate shares of the expenses of the Underlying Funds, as paid indirectly by the Pathway Series, will be no more, or less, than the fund expenses incurred directly by shareholders of the Underlying Funds.

Applicants' Conditions

Applicants will abide by the following conditions to the relief requested:

1. The Pathway Series and each Underlying Fund will be part of the same ''group of investment companies,'' as defined in rule 11a–3 under the Act.

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Pathway Series will not be ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees'').

4. Before approving any advisory contract under section 15, the board of trustees of the Pathway Series, including a majority of the Independent Trustees, shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Pathway Series.

5. Any sales charges and other service fees charged with respect to securities of the Pathway Series, when aggregated with any sales charges and service fees paid by the Pathway Series with respect to securities of the Underlying Funds, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Pathway portfolio and each of its Underlying Funds; monthly purchases and redemptions (other than by exchange) for each Pathway portfolio and each of its Underlying Funds; monthly exchanges into and out of each Pathway portfolio and each of its Underlying Funds; month-end

allocations of each Pathway Series portfolio's assets among its Underlying Funds; annual expense ratios for each Pathway portfolio and each of its Underlying Funds; and a description of any vote taken by the shareholders of any Underlying Fund, including a statement of the percentage of votes cast for and against the proposal by the Pathway Series and by the other shareholders of the Underlying Funds. Such information will be provided as soon as reasonably practicable following each fiscal year-end of the Pathway Series (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19567 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22099; 812–10140]

Van Eck Funds, et al.; Notice of Application

July 25, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Van Eck Funds, Van Eck Worldwide Insurance Trust (collectively, the ''Funds''), and Van Eck Associates Corporation (''Van Eck Associates'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g), and rule 2a–7 thereunder; under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1); and under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to enter into deferred compensation arrangements with their independent trustees.

FILING DATES: The application was filed on May 9, 1996, and amended on July 19, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 1996 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 the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 99 Park Avenue, New York, N.Y. 10016.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Robert A. Robertson, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company comprised of several investment portfolios. Van Eck Associates serves as the investment adviser to each series of the Funds. Applicants request that the exemption also apply to any registered investment companies that in the future are advised by Van Eck Associates or any entity under common control with or controlled by Van Eck Associates. (Such future funds are also referred to as the ''Funds.'')

2. Each Fund has a board of trustees, a majority of whom are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent trustees''). Each independent trustee receives annual fees from the Funds. No trustee who is an affiliated person of Van Eck Associates receives any remuneration from any Fund.

3. Effective January 1, 1996, certain independent trustees entered into a deferred fee agreement (each an ''Agreement''), an unfunded, nonqualified deferred compensation arrangement, with each of the Funds. Under the Agreement, an independent trustee may elect to defer receipt of all or a portion of his or her fees earned on or after the effective date of the Agreement through December 31, 1996.

4. Each of the Funds has established a book reserve account on behalf of each electing independent trustee (each a ''Deferred Fee Account''). On the dates that each such Fund would otherwise pay these deferred fees, the Fund credits such amounts into the Deferred Fee Account. Interest on each Deferred Fee Account is credited each quarter, calculated based on the balance of the Deferred Fee Account as of the first day of each quarter. The interest rate that has been used to date is based on the prevailing rate for 90-day U.S. Treasury bills in effect as of the prior quarter end or as close to that date as is possible.

5. Each of the Funds now proposes to adopt a formal deferred compensation plan (the ''Plan''). The Plan would permit independent trustees to elect to defer receipt of all or a portion of their fees, thereby also enabling them to defer payment of income taxes on such fees.

6. An independent trustee will be able to defer fees with respect to one, several or all of the Funds for which he or she serves as an independent trustee. The election is to be made by execution of a notice of election to defer compensation (''Notice of Election''). A Notice or Election generally must be made prior to January 1 of each calendar year for which compensation is to be deferred.

7. Each Fund now proposes to use returns on certain Funds and other investment companies that are not affiliated with Van Eck Associates designated from time to time by the trustees (the ''Eligible Funds'') to determine the amount of earnings and gains or losses allocated to an independent trustee's Deferred Fee Account. If the requested relief is granted, the value of the Deferred Fee Account as of any date would be periodically adjusted by treating the Deferred Fee Account as though an equivalent dollar amount had been invested and reinvested in certain designated securities (the ''Underlying Securities''). The underlying Securities for a Deferred Fee Account will be shares of any of the Eligible Funds as the participating independent trustee shall have designated in his or her Notice of Election. Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends and other earnings and all gains and losses which would have been realized had such account been invested in such Underlying Securities.

8. The Plan provides that a participating Fund's obligation to make payments from a Deferred Fee Account will be a general obligation of the Fund and payments made pursuant to the Plan will be made from such Fund's general assets and property. With respect to the obligations created under the Plan, the relationship of an

independent trustee to the participating Fund will be only that of a general unsecured creditor.

9. The Plan also provides that the participating Fund will be under no obligation to the independent trustee to purchase, hold or dispose of any investments but, if the Fund chooses to purchase investments to cover its obligations under such Plan, then any and all such investments will continue to be a part of the general assets and property of the Fund.

10. As a matter of prudent risk management, each Fund intends generally, and with respect to any money market Fund that values its assets by the amortized cost method hereby undertakes, to purchase and maintain Underlying Securities in an amount equal to the deemed investments of the Deferred Fee Accounts of its independent trustees.

11. Under the Plan, the independent trustee's deferred fees generally will be distributed commencing on a date specified in the independent trustee's Notice of Election, which may not be sooner than the earlier of the termination of the independent trustee's service as a trustee or one year following the deferral election. Payments will be made in a lump sum or in installments as shall be elected by the independent trustee. In the event of the independent trustee's death, amounts payable to him or her under the Plan will thereafter be payable to his or her designated beneficiary; in all other events, the independent trustee's right to receive payments generally will be nontransferable.

12. The Plan will not obligate any Fund to retain the services of an independent trustee, nor will it obligate any Fund to pay any (or any particular level of) trustee's fees to any trustee.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), 22(g), and rule 2a–7 thereunder to permit the Funds to offer the Plans; under sections 6(c) and 17(b) of the Act for an exemption from section 17(a)(1) to permit the Funds to sell securities issued by them to participating Funds; and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Funds to effect joint transactions incident to the Plans.

2. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants state that the Plan would possess none of the characteristics of the instruments which led to Congress's concerns in this area. In all cases, the liabilities for deferred fees are expected to be *de minimis* in relation to Fund net assets. The Plan would not induce speculative investment by any Fund or provide opportunity for manipulative allocation of a Fund's expenses and profits; control of each Fund would not be affected; and the Plan would not confuse investors or convey a false impression of safety.

4. Section 22(f) prohibits undisclosed restrictions on the transferability or negotiability of redeemable securities issued by open-end investment companies. The Plan would clearly set forth any restriction on transferability or negotiability. Such restriction would be included primarily to benefit the participating independent trustee, and would not adversely affect the interests of the independent trustee, the Fund or any shareholder of the Fund.

5. Section 22(g) prohibits registered open-end investment companies from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that may result when securities are issued for consideration that is not readily valued. Applicants believe that the Plan would merely provide for deferral of payment of fees and thus should be viewed as being issued not in return for services but in return for a Fund not being required to pay such fees on a current basis.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Existing series of Van Eck Funds have limitations on their ability to purchase securities issued by other investment companies (collectively, the ''Restriction Series'). Any relief granted from section 13(a)(3) would apply only to the Restriction Series. Applicants believe that an exemption is appropriate to enable the Restriction Series to invest in Underlying Securities without a shareholder vote. Applicants will provide notice to shareholders of the deferred compensation plan in their statements of additional information.[1] The value of the Underlying Securities is expected to be *de minimis* in relation to the total net assets of each Restriction Series. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments in the Restriction Series. Applicants believe that permitting the Restriction Series to invest in Underlying Securities without obtaining the shareholder approval would thus not cause harm to the Restriction Series or their shareholders, and would in fact benefit them by enhancing their ability to attract and retain qualified trustees without incurring the considerable costs of holding a shareholder meeting and soliciting proxies to approve a change in the investment policy in question.

7. Rule 2a–7 imposes certain restrictions on the investments of ''money market funds,'' as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value.

8. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Funds that are advised by the same entity may be ''affiliated persons'' of one another by reason of being under the common control of their adviser. Applicants request an exemption from 17(a)(1) for transactions between Eligible Funds that are affiliated with Van Eck Associates. Applicants believe that an exemption from this provision would not implicate Congress's concerns in enacting the section, but would merely facilitate the matching of a Fund's liability for deferred trustees' fees with the Underlying Securities that would determine the amount of such Fund's liability.

9. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the transaction is consistent with the policy

[1] The Division notes that other funds have disclosed their deferred compensation arrangements in a similar manner. *See John Hancock Funds, Inc.* (pub. avail. Jun. 28, 1996).

of each registered investment company concerned; and (c) the transaction is consistent with the general purposes of the Act. Because section 17(b) may apply only to a specific proposed transaction, applicants also request an order under section 6(c) so that the relief will apply to a series of transactions. Applicants believe that the proposed transactions satisfy the criteria of sections 6(c) and 17(b). The findings required by section 17(b)(2) are premised on the assumption that the relief requested from section 13(a)(3) is granted.

10. Section 17(d) of the Act prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed in the SEC. Rule 17s–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the SEC has granted an order permitting the transaction after considering whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants request relief under section 17(d) and rule 17d–1 for transactions with Eligible Funds that are affiliated with Van Eck Associates. As an affiliated person, the participating independent trustee would neither directly nor indirectly receive a benefit which would otherwise inure to the Funds or any of their shareholders. Deferral of an independent trustee's fees in accordance with the Plan would essentially maintain the parties, viewed both separately and in their relationship to one another, in the same position (apart from tax effects) as if the fees were paid on a current basis. The effect of the Plan would merely be to defer the payment of fees that the applicants would otherwise be obligated to pay on a current basis.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or the penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19528 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37478; File No. SR–BSE–96–8]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Resumption of the Pilot Program Regarding Certain Procedures for the Handling of Market-On-Close Orders

July 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 1996, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, and on July 22, 1996, filed Amendment No. 1 to the proposed rule change,[3] as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The BSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to resume the pilot program for handling market-on-close orders and amend the procedures for the handling of such orders. These procedures mirror the procedures in place on the primary markets in order to ensure equal treatment of orders in both markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule is to resume the pilot program for procedures relating to handling market-on-close (''MOC'') orders on expiration days, non-expiration days and in market conditions where New York Stock Exchange, Inc. (''NYSE'') Rule 80A is in effect. The proposal also amends certain procedures to mirror those of the primary markets, for the handling of MOC orders on expiration days[4] so that the BSE does not become a haven for MOC orders that are prohibited on the primary markets.[5] In this way, all orders sent to the Exchange will receive equal treatment to orders sent to the primary markets.

The procedures for handling MOC orders on expiration days under the pilot program, include: (a) providing a 3:40 p.m. deadline for the entry of all MOC orders in all stocks, (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:40 p.m., (c) prohibiting order imbalances of 50,000 shares or more as soon as practicable after 3:40 p.m. in the pilot stocks and (d) limiting the entry of MOC orders after 3:40 p.m. to offsetting published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:40 p.m. in those instances where a legitimate error has been made. The term ''pilot stocks'' refers to the list of stocks designated by the NYSE as pilot stocks for purposes of its auxiliary closing procedures.[6] Pursuant to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Karen A. Aluise, Assistant Vice President, BSE To Elisa Metzger, Special Counsel, SEC, dated July 17, 1996.

[4] The term ''expiration days'' refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently (''Expiration Fridays'') and (2) the trading day on which end of calendar quarter index options expire (''QIX Expiration Days'').

[5] The BSE's auxiliary closing procedures for expiration days had been approved on a pilot basis until October 31, 1995. *See* Securities Exchange Act Release No. 34918 (October 31, 1994), 59 FR 55504 (''1994 Pilot Approval Order''). The BSE did not request an extension of the pilot program after that date.

[6] The Expiration Friday pilot stocks consists of the 50 most highly capitalized Standard & Poors (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein. The QIX Expiration Day pilot stocks consist

Amendment No. 1, the BSE has proposed an amendment of the above procedures to allow for imbalance publications of 50,000 shares or more to be made not only in the pilot stocks, but also in stocks added to or dropped from an index, and in any other stock if requested by a specialist and approved by a Floor Official.

The procedures for handling MOC orders on nonexpiration days would remain unchanged. These procedures include: (a) providing a 3:50 p.m. deadline for the entry of all MOC orders in all stocks, (b) prohibiting the cancellation or reduction of any MOC order in any stock after 3:50 p.m., (c) publishing order imbalances of 50,000 shares or more as soon as practicable after 3:50 p.m. in the pilot stocks, stocks being added to or dropped from an index, and in any other stock with the approval of a Floor Official and (d) limiting the entry of MOC orders after 3:50 p.m. to offset published imbalances. With respect to item (b) above, the Exchange will permit cancellations of MOC orders after 3:50 p.m. in those instances where a legitimate error has been made.

The pilot program also includes procedures for the handling of MOC orders in market conditions where the NYSE's Rule 80A is in effect. Under the pilot program, on expiration days, if an MOC index arbitrage order to buy (sell), to establish or increase a position is entered, and Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be cancelled, regardless of the time Rule 80A goes into effect. If Rule 80A went into effect prior to 3:40 p.m., the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus''). If Rule 80A goes into effect after 3:40 p.m. and there is a published imbalance in the subject stock, the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus'') to offset the imbalance.

Similarly, on nonexpiration days, if an MOC index arbitrage order to buy (sell), to establish or increase a position is entered, and Rule 80A subsequently goes into effect because of significant upward (downward) market movement, the MOC order must be cancelled, regardless of the time Rule 80A goes into effect. If Rule 80A goes into effect prior to 3:50 p.m., the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus''). If Rule 80A goes into effect after 3:50 p.m. and there is a published imbalance in the subject stock the MOC order may be re-entered with the instruction ''buy minus'' (''sell plus'') to offset the imbalance.

of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

2. Statutory Basis

The statutory basis for the proposed rule is Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–96–8 and should be submitted by August 22, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6[7] of the Act. In particular, the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and in general, to protect investors and the public interest.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions related to trading strategies involving index derivative products. For instance, since 1986, the NYSE has utilized auxiliary closing procedures on expiration days. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response. Based on the NYSE's experience,[9] the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days.

In today's highly competitive market environment, however, it is possible that a regional exchange, which trades NYSE-listed stocks but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on the NYSE. Although the Commission has no reason to believe that the BSE market has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the BSE that, if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system.[10]

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] The NYSE has submitted to the Commission several monitoring reports describing its experience with the auxiliary closing procedures. The most recent report was submitted to the SEC by the NYSE on July 28, 1995. *See* Securities Exchange Act Release No. 36404 (October 20, 1995), 60 FR 55071.

[10] For example, if MOC orders prohibited on the NYSE were entered instead on the BSE, unusually

Continued

Accordingly, the Commission believes that it is reasonable for the BSE to adopt procedures for the handling of MOC orders that mirror the NYSE's, thereby ensuring the equal treatment of orders in both markets and, in the event of unusual market conditions, offering the BSE the same benefits in terms of potentially reducing volatility.

In this regard, the Commission notes that the proposed rule change will standardize the BSE's closing procedures on expiration days with those on the NYSE.[11] On expiration days, the BSE proposal will impose a 3:40 p.m. deadline for entry of all MOC orders. In conjunction with the prohibition on cancellation or reduction of any MOC order after 3:40 p.m., this requirement should allow the specialist to make a timely and reliable assessment, for every stock, of MOC order flow and its potential impact on the closing price. While the Commission recognizes that 3:40 p.m. is relatively near the close, the Commission previously has determined that such a deadline strikes a reasonable balance between the need to effectuate an orderly closing and the need to avoid unduly infringing upon legitimate trading strategies.[12]

The amended procedures for expiration days will require that, as soon as practicable after 3:40 p.m., BSE specialists disseminate substantial imbalances in the pilot stocks, in stocks being added to or dropped from an index, and in any other stock if approved by a Floor Official. In this regard, the BSE pilot program combines early submission of MOC orders with prompt dissemination of imbalances that reflect actual investor interest. As noted in prior Commission orders approving these procedures for pilot stocks,[13] the BSE should have sufficient opportunity to attract any contra-side interest necessary to alleviate substantial MOC order imbalances in any stock and to dampen their effect on the closing price.

In addition, the BSE will require order handling procedures for non-expiration days that are substantially similar to those in place for expiration days. This will allow members and member organizations to follow comparable procedures at the close on all trading days. Although there is less likelihood of an influx of MOC orders at the close on non-expiration days, certain trading and asset allocation strategies could employ MOC orders. The 3:50 p.m. deadline for MOC order entry and cancellation, as well as the requirement to disseminate MOC orders consisting of 50,000 shares or more as soon as practicable after 3:50 p.m., on non-expiration days should help the specialist make a timely and reliable assessment of MOC order flow and its potential impact on the closing price and also should ensure that any imbalance publications reflect actual investor interest. In the Commission's opinion, a 3:50 p.m. deadline strikes a more appropriate balance for non-expiration days (as opposed to the 3:40 p.m. deadline for expiration days) given the reduced likelihood of substantial MOC order imbalances due to derivatives-related trading strategies.

The Commission finds it appropriate for the BSE to provide for procedures for the handling of MOC orders in market conditions when the NYSE's Rule 80A is in effect.[14] The Commission believes that the procedures clearly inform market participants of the manner in which MOC order can be placed on the BSE when the NYSE's Rule 80A is in effect.

For the reasons discussed above, the Commission is approving the resumption of the pilot program, and Amendment No. 1, through October 31, 1997. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This will permit the proposed amendments to be effective simultaneously with the NYSE's amendments to the procedures for handling MOC orders.[15] In addition, the procedures the BSE proposes to use are identical to NYSE procedures that were published in the Federal Register for the full comment period and were approved by the Commission.[16]

It is therefore ordered, pursuant to Section 19(b)(2)[17] that the proposed rule change is hereby approved on a pilot basis through October 31, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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large MOC order imbalances on the regional exchange could contribute to overall market volatility.

[11] *See* Release No. 34–36404, *supra* note 9.

[12] *See, e.g.,* Securities Exchange Act Release No. 33639 (February 17, 1994), 59 FR 9295.

[13] *See* 1994 Pilot Approval Order, *supra,* note 5.

[14] The Commission continues to believe that the provisions of NYSE Rule 80A provides a useful means of addressing market volatility. See Securities Exchange Act Release No. 29854 (October 24, 1991), 56 FR 55963.

[15] *See* Release No. 34–36404, supra note 9.

[16] No comments were received in connection with the most recent proposed rule change which modified the NYSE procedures. *See* Release No. 34–36404, *supra* note 9.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[Release No. 34–37481; File No. SR–CHX–95–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments Nos. 1, 2, and 3 to Proposed Rule Change Relating to Listing Standards

July 25, 1996.

I. Introduction

On November 8, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish new quantitative and qualitative listing standards with respect to common stock, preferred stock, bonds and debentures, warrants, contingent value rights, and other securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36531 (Nov. 30, 1995), 60 FR 62918 (Dec. 7, 1995). No comments were received regarding the proposal.

On December 5, 1995, June 18, 1996, and June 23, 1996, respectively, the Exchange submitted to the Commission Amendment Nos. 1, 2, and 3 to the proposed rule change to make grammatical changes to the text of the rule and to clarify certain listing and maintenance requirements and corporate governance standards.[3] This order approves the proposed rule change, including Amendment Nos. 1, 2, 3 on an accelerated basis.

II. Description of Proposal

This rule change includes original listing and maintenance criteria and

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Craig Long, Foley & Lardner, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 4, 1995 (''Amendment No. 1''); Letter from Craig Long, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, SEC, dated June 17, 1996 (''Amendment No. 2''); Letter from Craig Long, Foley & Lardner, to Jennifer S. Choi, Division of Market Regulation, SEC, dated July 23, 1996 (''Amendment No. 3''). Amendment Nos. 1, 2, and 3 are described in more detail *infra* in the description of the proposal.

establishes qualitative standards and corporate governance policies applicable to listed companies. Specifically, the rule change establishes a new two-tier listing structure whereby the Tier I listing standards, in general, will be quantitatively and qualitatively higher (*i.e.*, more restrictive and demanding) than Tier II listing standards. The current CHX listing standards, to a large extent, will constitute the listing requirements for new CHX Tier II listing, and CHX proposes new higher standards for the CHX Tier I listing.

Tier I includes standards for listing common stock, preferred stock and similar issues, bonds and debentures, stock warrants, contingent value rights, and other securities suited for auction market trading. Tier II includes listing standards for common stock, preferred stock, bonds and debentures, and warrants.

All securities, regardless of the requirements used for their admission to listing, will be subject to identical auction market trading rules. The Exchange, however, will identify and distinguish at all times which securities are listed pursuant to Tier I and Tier II standards. The Exchange will identify Tier I issues with a designation symbol annexed to its ticker symbol.

CHX listing standards for Tier I, either as regards to initial or maintenance listing, are not waivable. Moreover, all issuers listed under Tier I must satisfy the Tier I maintenance standards on a continuing basis. For Tier II, the Exchange may revise the Tier II requirements upward under certain circumstances, but an exception to Tier II requirements may be made only by vote of the Executive Committee of the Board of Governors.

1. Tier I Listing Standards

The Exchange's new listing standards for Tier I common stock are based on standards established in a Memorandum of Understanding (''MOU'') between the North American Securities Administrators Association, Inc. (''NASAA'')[4] and the Philadelphia Stock Exchange (''Phlx'')[5] and between NASAA and the Pacific Stock Exchange.[6] The standards in these MOUs were developed in an effort to provide issuers with securities listed on these exchanges a basis for obtaining an exemption from state securities registration requirements (*i.e.*, blue sky exemption). The MOUs created minimum quantitative initial inclusion and maintenance standards, corporate governance requirements, and minimum voting rights for listing on the respective exchange. The Exchange has adopted the MOUs' two alternative minimum quantitative initial inclusion standards for common stock, as follows:

Description	Alt. No. 1	Alt. No. 2
Net Worth	$4,000,000	$12,000,000.
Pre-Tax Income	750,000	
Net Income	400,000	
Public Float (Shares)	500,000	1,000,000.
Market Value of Float	3,000,000	15,000,000.
Minimum Bid	$5/share *	$3/share *
Public Beneficial Holders	800/400 **	400.
Operating History		3 years.

*The $5/$3 price must be the closing bid price for a majority of business days for the six-month period prior to the date of the application.[7]
f**800 shareholders are required for companies with at least 500,000 but less than 1 million shares publicly held, or 400 shareholders for companies with at least 1 million shares publicly held, or 500,000 shares publicly held and daily trading volume in excess of 2,000 shares per day for six months.

Initial public offerings must be underwritten on a ''firm commitment'' basis and must meet the CHX's listing standards within a 30-day grace period after completion of the offering, except that the initial public offering price will only be required to meet the price required at the time of application and not the six-month historical requirement.[8]

For preferred stock, the original listing criteria vary depending on where the issuer has its common stock listed. If the related common stock is listed on the Exchange, New York Stock Exchange (''NYSE''), or American Stock Exchange (''Amex''), there must be at least 100,000 preferred shares publicly held and an aggregate market value of at least $2,000,000. If the related common stock is not so listed, there must be at least 400,000 preferred shares publicly held, an aggregate market value of at least $4,000,000, and at least 800 public beneficial holders of 100 shares or more. In either cases, the issuer must meet the net tangible assets and earnings requirements for common stock and must meet and appear able to service the dividend requirement for the preferred stock, and each share of preferred stock must have a minimum closing bid price of $10 to be eligible for listing.

Moreover, the Exchange will not list convertible preferred issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Articles of Incorporation or any amendments thereof.[9] If preferred stock is convertible into a class of common stock, such class must meet the Tier I listing requirements for common stock. Current last sale information must also be available with respect to the underlying security into which the security is convertible.[10]

For listing of bonds and debentures under Tier I, issuers will be evaluated based on the same net tangible assets and earnings criteria applicable to common stock. If an issuer's common stock is listed on the Exchange, NYSE or Amex, the bonds or debentures must have a minimum aggregate market value and principal amount of $5,000,000 each and at least 100 public beneficial holders. If the related common stock is not traded on any of the above referenced exchanges, the bonds or debentures must have an aggregate market value and principal amount of at least $20,000,000 each and at least 100 public beneficial holders. In either case,

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[5] The Memorandum of Understanding was approved by NASAA and Phlx on October 12, 1994.

[6] The Memorandum of Understanding was approved by NASAA and PSE on October 12, 1994.

[7] *See* Amendment No. 2, *supra* note 3.

[8] *Id.*

[9] *Id.*

[10] Redeemable preferred stock issues must provide for redemption pro rata or by lot. *See* Amendment No. 2, *supra* note 3.

issuers must meet and appear able to satisfy interest and principal when due on the bond or debenture to be listed.

Moreover, the Exchange will not list convertible debt issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Indenture Agreement.[11] If a debt security is convertible into a class of equity security, such equity security must meet the Tier I listing requirements. Current last sale information must also be available with respect to the underlying security into which the bond or debenture is convertible.[12]

To list municipal securities under Tier I, the aggregate market value and principal amount must be at least $20,000,000 each, and there must be at least 100 public beneficial owners. The municipal security must also be rated as investment grade by at least one nationally recognized rating service. The Exchange intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with Municipal Securities Rulemaking Board (''MSRB'') Rule G–3 regulations regarding municipal securities principals and representatives.[13] All Exchange contracts in municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB.[14]

For a Tier I listing of stock warrants, there must be at least 500,000 stock warrants publicly held by not less than 250 public beneficial holders. The Exchange will not list stock warrants under the Tier I designation unless the common stock of the company or other security underlying the stock warrants is already listed (and meets the relevant maintenance requirements for continued listing) or will be listed concurrently with the stock warrants on the Exchange under the Tier I designation.

For the listing of Tier I contingent value rights (''CVRs''),[15] issuers must meet the net tangible assets and earnings requirements applicable to common stock. In addition, there must be at least 600,000 publicly held CVRs with a market value of at least $18,000,000 and at least 400 public beneficial holders, the issuer must have total assets of at least $100,000,000, and the CVRs must have a maturity of at least one year. In the alternative, the CVRs must have been approved for listing on another national securities exchange.[16] Prior to the commencement of trading of CVRs, the Exchange will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.[17]

The Exchange will consider listing other securities not otherwise covered by the Tier I listing requirements provided the issue is suited for auction market trading. Prior to commencement of trading of such securities, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.[18] Such securities must have at least 1,000,000 publicly held trading units and a principal amount/market value of at least $20,000,000. The issue must also have at least 400 public beneficial holders or if the issue is traded in thousand dollar denominations, there must be a minimum of 100 public beneficial holders. In addition, the issuer must have total assets of at least $100,000,000 and net worth of at least $10,000,000. If the issuer is unable to satisfy the earnings requirements applicable to Tier I common stock, the Exchange will require the issuer to have total assets of at least $200,000,000 and net worth of at least $10,000,000, or total assets of at least $100,000,000 and net worth of at least $20,000,000.[19]

Moreover, the Tier I listing standards for these securities are not intended to accommodate the listing of securities that raise novel or significant regulatory issues and, therefore, the listing of such securities would require a separate rule filing submitted pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. In this regard, the Exchange represents that it will consult with the Commission on a case-by-case basis concerning the appropriateness of filing a proposed rule change concerning such new product.[20]

2. Tier II Listing Standards

For issuers unable to satisfy the Tier I standards, the Exchange proposes Tier II standards to allow companies that may not be large enough to list under Tier I the opportunity to have their securities traded in an auction market, thereby increasing liquidity and issuer access to the investment community.

The numerical Tier II initial listing standards for common stock, preferred stock, bonds and debentures, and warrants are substantially similar to the current CHX standards applicable to all listed issues, except that index warrants and contingent value rights can no longer be listed under these standards. With respect to Tier II listing standards, the Exchange proposes to use the term ''publicly held shares,'' in new Rule 18, consistent with new Rule 1(b)(v).[21] The Exchange also is now requiring that listed companies have at least 500 public beneficial holders and that they demonstrate the ability to produce adequate annual earnings, without specifying a minimum annual amount.[22]

In cases where a company's security does not qualify for inclusion under Tier I, yet the security is listed or has been approved for listing on the NYSE, Amex (except for ''ECM'' securities), or Nasdaq National Market System (''Nasdaq/NMS''), the Exchange may list such security under Tier II in reliance upon the listing requirements of the applicable exchange or association.[23]

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[11] *Id.*

[12] Redeemable issues must provide for redemption pro rata or by lot. *See* Amendment No. 2, *supra* note 3.

[13] The National Association of Securities Dealers (''NASD'') has authority to enforce MSRB rules for listed municipal securities. The CHX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

[14] The Exchange has also represented that municipal securities traded on the Exchange will not be subject to off-Board trading restrictions. *See* Amendment No. 2, *supra* note 3.

[15] CVRs are unsecured obligations providing for a possible cash payment at maturity based on the value of an equity security issued by an affiliate of the issuer of the CVRs (''related security''). At maturity, the holder of a CVR would be entitled to a cash payment at maturity if the market price of the related security is lower than a predetermined target price. If the market price of the related security equals or exceeds the target price, the holder of the CVR would not be entitled to receive such a cash payment. *See* Securities Exchange Act Release No. 33843 (Mar. 31, 1994), 59 FR 16666 (Apr. 7, 1994).

[16] *See* Amendment No. 1, *supra* note 3. The Commission notes that if another exchange amends its listing standards for CVRs and lists securities pursuant to the amended standards, the Commission expects the CHX to make conforming changes.

[17] *See* Amendment No. 2, *supra* note 3.

[18] The Exchange has also represented to the Commission that before listing or trading a new product, the Exchange will review whether any Section 19(b) rule filings would be required pursuant to Rule 12f–5. *See* Amendment No. 2, *supra* note 3.

[19] If the issue contains cash settlement provisions, settlement must be made in U.S. dollars, and if the issue contains redemption provisions, the redemption price must be at least $3.00 per unit.

[20] *See* Amendment No. 3, *supra* note 3.

[21] *See* Amendment No. 2, *supra* note 3.

[22] *Id.*

[23] *Id.*

3. Corporate Governance and Disclosure Policies

Tier I

The Exchange proposes new corporate governance standards for Tier I securities. These provisions include rules concerning conflicts of interest, independent directors, audit committees, quorum, shareholder approval, annual meetings, and solicitation of proxies and consents. Moreover, these standards include specific requirements for disclosure of reports filed with federal regulatory bodies, specific requirements for shareholder approval for certain corporate actions, and specific voting rights provisions. These requirements are described in detail in the new rules.

With respect to voting rights, the new rule prohibits the listing or continued listing of any common stock or other equity security of a domestic issuer if the company issues any class of security or takes other corporate action with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class of common stock.[24] Moreover, to be eligible for listing, preferred stock must give the holders the right to elect at least two members of the issuer's Board of Directors no later than two years after a default in the payment of fixed dividends.[25]

Tier II

The Exchange is proposing to apply its current corporate governance standards to Tier II securities. These include, among others, requirements for an audit committee, independent directors, and solicitation of proxies. The Exchange also proposes to impose new voting rights provisions on Tier II securities.[26] The new rule prohibits the voting rights of existing shareholders of publicly traded common stock from being disparately reduced or restricted through any corporate action or issuance.[27] Although this voting rights standard is similar to the standard applicable to Tier I securities, it provides the Exchange with useful flexibility in evaluating transactions on a case-by-case basis.

Tier I and Tier II

The Exchange will apply the current public disclosure requirements to both Tier I and Tier II issues.[28]

4. Maintenance Requirements

Tier I

The quantitative maintenance standards for Tier I common stock are as follows: (1) at least 200,000 publicly held shares and a market value of at least $1,000,000; (2) at least 400 public beneficial holders, or at least 300 beneficial holders of 100 shares or more; and (3) net worth of at least $2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years, or $4,000,000 if losses in three of the last four years.

The preferred stock maintenance standards require for Tier I securities the same net worth standards as common stock, at least 100,000 publicly held shares with a market value of at least $1,000,000, and at least 150 public beneficial holders. In addition, the issuer must not have sustained losses from continuing operations and/or net losses in the five most recent fiscal years. If preferred stock is convertible into a class of common stock, such class must meet the applicable Tier I maintenance requirements.[29]

Tier I bonds and debentures must maintain the same net worth maintenance standards as common stock, an aggregate market value and principal amount of at least $1,000,000 each, and at least 100 public beneficial holders. In addition, for Tier I debt, the issuer must not have sustained losses from continuing operations and/or net losses in the five most recent fiscal years. For debt securities of non-listed issuers, the security must be rated as investment grade by at least one nationally recognized rating service. If a debt security is convertible into a class of equity security, such class must meet the applicable Tier I maintenance requirements.[30]

In the case of Tier I stock warrants, the common stock of the company or other security underlying the stock warrant must meet the applicable Tier I maintenance requirements. Finally, Tier I CVRs must maintain an aggregate market value of at least $1,000,000. If the security to which the CVR is tied is delisted, trading in the CVR will be suspended and proceedings initiated to delist the CVRs.[31]

Securities listed under the Tier I designation will not be granted waivers from the Exchange's maintenance requirements. For any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, the Exchange will initiate a proceeding to redesignate it as a Tier II security.

Tier II

The Exchange proposes to apply the current maintenance standards for all securities listed on the Exchange to Tier II securities. If a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the CHX will recognize that security as a Tier I issue.

The Exchange does not propose to materially change its delisting procedures.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6.[32] The Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization to screen issuers and to provide listed status only to *bona fide* companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and

[24] This voting rights standard is modelled after former Commission Rule 19c–4, which is no longer in effect. The model MOU continues to utilize the Rule 19c–4 voting rights standard.

[25] In addition, any change in the rights, privileges or preferences of preferred stock holders requires at least a two-thirds vote of the preferred class, voting as a class. The creation of any additional class of preferred stock senior to or equal in preference to the issue to be listed requires at least a favorable majority vote of the preferred class, voting as a class.

[26] *See* Amendment No. 2, *supra* note 3.

[27] *Id.* This standard is almost identical to the voting rights standard of the NYSE and Amex.

[28] *Id.*

[29] Current last sale information must be available with respect to the underlying security into which the security is convertible. *See* Amendment No. 2, *supra* note 3.

[30] Current last sale information must be available with respect to the underlying security into which the security is convertible. *See* Amendment No. 2, *supra* note 3.

[31] *Id.*

[32] 15 U.S.C. § 78F.

liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the Exchange with greater flexibility in determining which securities warrant inclusion on the Exchange, without compromising the benefits that the Exchange's listing standards offer to investors.

The Commission notes that most of the Exchange's new listing standards are substantially similar to the rules of existing national securities exchanges and the Nasdaq National Market and, therefore, finds that these standards are equally acceptable for the Exchange. To the extent that the Exchange's proposed rules do differ from those of existing national securities exchanges and the Nasdaq National Market, the Commission finds them also to be consistent with the Act.

In addition to the quantitative standards, the other qualitative requirements, such as the establishment of audit committees, voting rights, shareholder approval, and disclosure policies, ensure that companies trading on the Exchange will adequately protect the interests of public shareholders. The Commission also notes that because extensive listing and maintenance standards are being adopted, only companies suitable for exchange listing are eligible for trading on the Exchange. Further, as noted above, for Tier I securities the listing and maintenance criteria are not waivable. This will ensure that the minimum requirements necessary to ensure adequate depth and liquidity to support exchange trading will be met.[33]

Moreover, with respect to the CHX's proposal to list other securities, the Commission believes that the proposed rule change is consistent with the Act because it relates only to those securities that are similar to products currently listed for trading by the Exchange. If a new product raises novel or significant regulatory issues, the Exchange must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[34]

With respect to CVRs, the CHX's proposed standards are identical to those of the other securities exchanges. Moreover, the Exchange has represented that it will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. The Commission believes that this should help ensure that only customers with an understanding of the risks attendant to the trading of CVRs trade these securities on their brokers' recommendations.

Finally, the Commission believes that inclusion of a security for listing on an exchange should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.[35] The Commission believes that this rule provides the necessary flexibility to determine whether to list an issuer, while ensuring that certain minimum standards must be met. Thus, the Commission believes that the new listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. The new standards will provide important guidance to the Exchange review process, and will alert issuers seeking listing on the Exchange, as well as current Exchange issuers, of the Exchange's specific standards.

Moreover, the Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. These amendments made clarifying changes to the rule proposal and strengthened the listing requirements under the proposal. Moreover, the Commission did not receive any comments on the original proposal,[36] which was noticed for the full statutory period, nor did it receive comments on a similar PSE proposal that was also noticed for the full statutory period.[37] Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment Nos. 1, 2, and 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–95–26 and should be submitted by August 22, 1996.

V. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it. The rule change provides enhanced listing standards for Exchange listed securities which provide greater protection for investors and the public interest.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–CHX–95–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

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[33] The Commission notes that for Tier II securities, the Exchange may revise the requirements upward under certain circumstances, but only the Executive Committee of the Board of Governors may make an exception to the requirements. The Commission expects the Exchange to treat these standards generally as minimum requirements. To the extent the CHX Executive Committee has authority to permit lower standards, the Commission believes this should only be permitted in the rarest of circumstances and only when the CHX is assured an adequate market in the security can continue to be made and continued listing is supported in the public interest.

[34] *See* Amendment No. 3, *supra* note 3.

[35] *See, e.g., In the Matter of Silver Shield Mining and Milling Company,* Securities Exchange Act Release No. 6214 (Mar. 18, 1960) (''use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act''); *In the Matter of Consolidated Virginia Mining Co.,* Securities Exchange Act Release No. 6192 (Feb. 26, 1960) (same).

[36] *See* Securities Exchange Act Release No. 36531 (Nov. 30, 1995), 60 FR 62918 (Dec. 7, 1995).

[37] *See* Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 38998 (Aug. 1, 1994) (approval of PSE's two-tier listing structure).

[38] 15 U.S.C. § 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

[Release No. 34–37482; File No. SR–GSCC–96–04]

July 25, 1996.

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Interdealer Broker Netting Members Participating in Repurchase Transactions Settlement Services

On May 10, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–04) under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to allow interdealer broker (''IDB'') netting members to become eligible for GSCC's netting service for repurchase and reverse repurchase transactions involving government securities as the underlying instrument (''repos''). On May 13, 1996, GSCC amended the filing.[2] Notice of the proposal was published in the Federal Register on May 28, 1996.[3] The Commission received six comment letters[4] with GSCC responding to one of the comment letters.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

GSCC previously introduced a comparison service for repo transactions[6] and a netting service for the non-same-day-settling aspects of next-day and term repos.[7] As initially implemented, IDB netting members were not eligible for participation in the repo netting service.[8] This proposal allows IDB netting members to participate in GSCC's repo netting service.

Pursuant to this rule change, IDB netting members and their non-IDB netting member customers (*i.e.*, dealers) will submit data on brokered repos to GSCC in the same manner as they do for cash transactions. GSCC will compare, net, and settle repo start legs which are submitted prior to the start date (*i.e.*, non-same-day-settling start legs) and all repo close legs for next-day and term repos pursuant to GSCC's existing procedures for the netting and settling of repos. GSCC Rule 18, Special Provisions for Repo Transactions, will also apply to brokered repos.[9]

Because GSCC currently does not clear same-day-settling start legs, the parties to brokered repos will assume the responsibility for the intraday settlement of such start legs outside of GSCC. As a result, IDBs will be assuming principal liability for these transactions. Through its novation, GSCC will be the legal counterparty for all eligible netted close legs and start legs submitted prior to the settlement date and will guarantee settlement as of the delivery to participants of netting output information on the day following the trade date (''T+1''). Therefore, an IDB's exposure is limited to its principal liability in the event that GSCC ceases to act for its customer pursuant to GSCC Rule 19 or 20 during the period between the execution of the trade and the effectiveness of GSCC's guarantee. If a dealer fails in its settlement obligations to the IDB but is still a GSCC member, GSCC will accept the repo transaction and treat the start leg as a forward settling start leg to be settled through GSCC.

Only IDBs that have and agree to maintain a level of excess net capital or excess liquid capital, as applicable, of at least $10 million are eligible to submit data on repo transactions to GSCC.[10] Furthermore, IDBs may only submit to GSCC repo transactions that have been executed between two dealers that have been designated as eligible to participate in GSCC's repo netting services.[11] As a result, the IDB's position will always net out at GSCC.

IDBs are subject to the following operational requirements: (1) Upon being informed by either GSCC or another netting member of an error in or problem with the data on an eligible repo transaction that it has submitted to GSCC, an IDB netting member must act promptly and in good faith to correct the error; (2) each IDB repo netting member will be assigned a second GSCC participant number, and all repos must be processed using that number;[12] and (3) each IDB repo netting member will be required to establish a separate account with a separate Fedwire address at a clearing bank that will be used exclusively for the intraday settlement outside of GSCC of same-day-settling start legs. (*I.e.*, the dealer member on the repo side of the start leg will deliver securities to this separate Fedwire account, and the IDB will redeliver the securities to the contraparty from this account.) Each IDB repo netting member must authorize its clearing bank to allow GSCC to review this clearing account. GSCC will review this account to facilitate the correction of errors and

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[1] 15 U.S.C. § 78(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Division of Market Regulation (''Division''), Commission (May 13, 1996).

[3] Securities Exchange Act Release No. 37230 (May 20, 1996), 61 FR 26550.

[4] Letters from Edwin F. Payne, Chief Executive Officer, Liberty Brokerage Investment Corp. (''Liberty''), to Jonathan G. Katz, Secretary, Commission (May 16, 1996); David C. Bushnell, Managing Director, Salomon Brothers, Inc. (''Salomon''), to Jonathan G. Katz, Secretary, Commission (May 16, 1996); Roger J. Cohen, Chief Operating Officer, Garvin GuyButler (''Garvin'') to Jonathan G. Katz, Secretary, Commission (May 17, 1996); William S. Molloy, Managing Director, Morgan Stanley & Co. (''Morgan Stanley''), to Jonathan G. Katz, Secretary, Commission (May 20, 1996); Raymond McLaughlin, Managing Director, Patriot Securities, Inc. (''Patriot''), to Jonathan G. Katz, Secretary, Commission (May 17, 1996); and Stephen K. Lynner, President, Delta Clearing Corp. (''Delta''), to Jonathan G. Katz, Secretary, Commission (June 18, 1996).

[5] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jerry W. Carpenter, Assistant Director, Division, Commission (June 25, 1996).

[6] Securities Exchange Act Release No. 35557 (March 31, 1995), 60 FR 17598 [File No. SR–GSCC–94–10] (Order approving proposed rule change relating to implementing a comparison service for repos).

[7] Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 [File No. SR–GSCC–95–02] (order approving a proposed rule change relating to netting services for the non-same-day-settling aspects of next-day and term repos).

[8] GSCC's long-range plans for its repo services entail the full and complete automation of all aspects of start and close leg processing, including the intraday settlement of repo start legs. IDB netting members were not made eligible for GSCC's repo netting services because brokering in the repo market generally was done on a give-up basis (*i.e.*, the brokers give up the names of each counterparty to the other and drop out of the transaction). GSCC initially intended to address IDB participation in the repo netting system when implementing a netting and settlement service for same-day-settling start legs. Because GSCC will not be able to implement such a service until the last quarter of this year at the earliest, GSCC filed this proposed rule change in order to expedite the entry of IDB netting members in the repo netting system.

[9] Rule 18 establishes eligibility requests for participation in the repo netting process, establishes the timing for novation of repo transactions, and sets forth netting members' obligations to submit repo transactions to GSCC, another registered clearing agency, or a clearing agency that has been exempted from registration as a clearing agency.

[10] The Commission recently approved File No. SR–GSCC–96–02, which requires all IDBs, regardless of whether they participate in the repo netting service, to have and to maintain a minimum level of excess liquid/net capital of at least $10 million. Securities Exchange Act Release No. 37343 (June 20, 1996), 61 FR 33564 (order approving a proposed rule change modifying the minimum financial criteria for Category 1 IDB netting membership).

[11] The definitions for Category 1 and Category 2 IDBs have been amended to account for repo transactions with non-GSCC members which will not be submitted to GSCC. Specifically, Category 1 IDBs are not limited to acting exclusively as brokers on behalf of GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. Similarly, Category 2 IDBs are not limited to acting exclusively as brokers or conducting at least ninety percent of their business with GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. IDB netting members will not need to report data on repos pursuant to Section 3 of Rule 15, and the continuance standards of Rule 3, Section 5 (g) and (i) will not take into account repo transactions.

[12] The second account will make it easier for GSCC to monitor an IDB's repo activity.

problems. For example, if a same-day-settling start leg fails to settle, GSCC will be aware that the deliver and receive obligations must be carried into GSCC for settlement. GSCC will not have or will not assume any responsibility for the settlement of a same-day-settling start leg other than same-day-settling legs that are converted into forward settling start legs.

II. Comment Letters

The Commission received five letters from commenters in favor of GSCC's proposed rule change.[13] The three IDB commenters believe that being excluded from the repo netting process puts them at a disadvantage as market participants.[14] Three commenters believe that the proposal will increase liquidity in the repo market.[15] Three commenters believe that allowing IDBs to participate in repo netting will bring enhanced risk protection and a more efficient settlement process to a broader scope of repo transactions.[16]

One commenter opposed the proposed rule change.[17] This commenter believes that allowing IDBs to assume the role of principal in repo transactions introduces an element of credit and performance risk to the repo marketplace. The commenter is concerned that IDBs, which are traditionally agents, do not have the requisite experience to act as repo counterparties. The commenter also is concerned that IDBs could have exposure over several days resulting from a dealer's failure to meet its settlement obligations.

GSCC responded to this commenter stating that there will be no significant risks with the participation of IDBs in repo netting because GSCC will accept only data on repo transactions that have been executed between dealer netting members eligible to participate in GSCC's repo netting service.[18] Thus, absent error, GSCC believes that IDBs should net out in every case. Furthermore, GSCC noted that in addition to certain financial requirements, GSCC will impose significant operational requirements on participating IDBs to ensure that if data submission errors do occur, they will be corrected promptly.[19] GSCC also stated that there is no possibility of multiday exposure by a participating dealer member to an IDB because if a dealer counterparty on the short side fails on trade date to deliver securities to its IDB counterparty in settlement of the start leg but is still a GSCC member, the start leg will be treated as a forward settling start leg that will be guaranteed and settled by GSCC.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[20] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes GSCC's rule change meets these goals because the introduction of IDBs to the repo netting system continues the process whereby GSCC provides the benefits of centralized automated settlement to a broader segment of government securities transactions.

The one adverse commenter expressed concern over the credit and performance risks of IDBs as counterparties in repo transactions. The Commission believes that GSCC has in place risk management procedures that adequately address these concerns. For example, GSCC imposes minimum excess net capital or minimum excess liquid capital requirements on IDBs, as applicable, for eligibility in submitting data on repo transactions to GSCC for netting. By only accepting data on repo transactions that have been executed between two dealers that have been designated as eligible to participate in GSCC's repo netting services, GSCC reduces the risks associated with IDBs by assuring that the IDBs' positions at GSCC will generally net out. Furthermore, unless GSCC ceases to act for a dealer participant prior to the effectiveness of GSCC's guarantee of the close leg on T+1, IDBs' liability is limited to one day's exposure.

The Commission believes that GSCC's operational requirements will minimize potential risks of allowing IDBs to participate in the repo netting service. The Commission also believes that the benefits of the proposed rule change, including more efficient settlement, outweigh any possible risks of allowing IDBs to participate in the repo netting system and promote the prompt and accurate clearance and settlement of securities transactions. Furthermore, the risk management and operational procedures imposed by GSCC on IDB netting members participating in the repo netting service should help to assure the safeguarding of securities and funds in the custody or control of GSCC or for which it is responsible.

IV. Conclusion

The Commission finds that GSCC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–96–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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[13] *Supra* note 3. Of the five commenters in favor of the proposal, three are IDBs (Liberty, Garvin, and Patriot) and two are broker-dealers (Salomon and Morgan Stanley).

[14] These commenters state that eligibility will allow them to shift to blind brokering of repos, as opposed to brokering on a give-up basis, which they believe is a preferable form of trading.

[15] Salomon, Garvin, and Morgan.

[16] Salomon, Morgan, and Liberty.

[17] Delta Clearing Corp., *supra* note 3.

[18] *Supra* note 5.

[19] As indicated above, these operational requirements include the requirement that an IDB act promptly and in good faith to correct any error in or problem with the data on an eligible repo transaction that it has submitted to GSCC; the assignment of a second GSCC participant number for processing of all repos; and the requirement that each IDB repo netting member establish a separate account with a separate Fedwire address at a clearing bank to be used exclusively for the intraday settlement outside of GSCC of same-day-settling start legs.

[20] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[21] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37479; File No. SR–Phlx–96–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Adoption of Automatic Double-Up/Double-Down Price Improvement for Eligible PACE Orders

July 25, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 1, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and on July 23, 1996, submitted Amendment No. 1 to the proposed rule change,[1] as described in Items I, II, and

[1] *See* letter from Gerald D. O'Connell, Senior Vice President, Phlx, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated July 19, 1996

III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt paragraph (c) to Supplementary Material .07 of Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution (''PACE'') System. The purpose of the new provision is to automatically provide double-up and double-down price improvement of the minimum variation,[2] usually ⅛ point, to PACE market orders in New York Stock Exchange and American Stock Exchange listed securities. PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor.

Specifically, in any instance where the bid/ask of the PACE quote is wider than the minimum variation, eligible market orders received through PACE shall be provided with double-up/double-down price improvement. For purposes of this provision, double-up/double-down price improvement would be required whenever a double-up or double-down situation occurs with respect to the execution price of a PACE order. More specifically, a double-up/double-down situation occurs whenever an order is guaranteed an execution at the PACE quote resulting in a trade that creates: (i) a plus or minus tick that is two minimum variation ticks (up or down) from the last regular way sale on the primary market; or (ii) a tick that is at least two (up or down) minimum variation ticks from the regular way sale previous to the last regular way sale in the security on the primary market.

Orders eligible for such price improvement must be of a size equal to or less than the established maximum order size, determined as a fixed number of shares for all specialist units by the Floor Procedure Committee (''Committee''). A specialist may determine to provide double-up/double-down price improvement to eligible orders larger than the size established by the Committee, which is thus a ''minimum'' size.

Price improvement will be automatically accorded by the PACE system to qualified orders, which will be automatically executed at the improved price. However, in the event that this automatic execution feature of PACE is not functioning and unable to provide an automatic execution, it shall be the responsibility of the specialist to ensure price improvement treatment to eligible PACE orders on a manual basis in accordance with the proposed provisions. In extraordinary circumstances, the Committee Chairman or his designee may grant an exemption from the requirement of double-up/double-down price improvement.[3]

In addition, the Exchange proposes to amend Supplementary Material .05 by titling the provision ''Public Order Exposure System'' or ''POES,'' as it is known at the Exchange, as well as to reflect a 30 second time period, in lieu of 15 seconds.[4]

The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Generally, Rule 229 governs the PACE system and defines its objectives and parameters. PACE accepts orders for automatic or manual execution in accordance with the provisions of the Rule. Agency orders received through PACE are subject to certain minimum execution parameters, with non-agency orders subject to the provisions of Supplementary Material .02. The PACE Rule establishes execution parameters for orders depending on type (market or limit) and size. The execution of limit orders is governed by Supplementary Material .09 and .10. With respect to market orders, Supplementary Material .05, .06, .07 and .08 apply.

Currently, round-lot market orders up to 500 shares and partial round-lot (''PRL'' which combines a round-lot with an odd-lot) market orders up to 599 shares are stopped at the PACE Quote[5] at the time of entry into PACE for 30 seconds to provide the Phlx specialist with the opportunity to effect price improvements when the spread between the PACE quote exceeds ⅛ point.[6] This ''30 second order exposure window,'' which is also known as the Public Order Exposure System (''POES''), ensures that stopped orders are automatically executed at the stopped price after 30 seconds. At this time, the Exchange proposes to codify the 30 second time period into Supplementary Material .05, which currently reflects the prior 15 second window. The Exchange believes that extending the window to 30 seconds enables the specialist to better gauge the market and thus, improves the likelihood of price improvement. The Exchange has learned, in its one year of experience with this order exposure window, that additional time for a meaningful opportunity for price improvement to be afforded to such orders is needed. The 30 second window enables the specialist to better locate between-the-market interest and probe other market centers. Of course, a large percentage of orders that are currently POES-eligible will also be eligible for the proposed automatic double-up/double-down price improvement. In such case, as explained

(''Amendment No. 1''). Amendment No. 1 clarifies the examples of the double-up/double-down price improvement proposal and certain elements of the proposal. Moreover, Amendment No. 1 provides the history of the 30-second order exposure window proposal. These descriptions and changes are incorporated into Items I, II, and III below.

[2] Pursuant to Rule 125, bids and offers are generally made at a variation of ⅛ of one dollar ($1.00) in stocks. With respect to American Stock Exchange listed stocks trading under $10, the minimum variation is 1/16.

[3] Specifically, the Exchange anticipates that extraordinary circumstances warranting such action will arise when fast market conditions occur where stock prices are not readily discernable over interrogation devices as well as where system malfunctions occur. *See* Amendment No. 1, *supra* note 1.

[4] According to the Exchange, the POES window was extended from 15 to 30 seconds in December 1995 with the authorization of the Committee. Due to an oversight, the Exchange did not file this change as a proposed rule change with the Commission for approval prior to its implementation. After discovering this error in the course of drafting PACE Rule changes with respect to double-up/double-down price improvement, the Exchange filed this change with the Commission. The Exchange also represents that to date it has not distributed marketing materials reflecting an order exposure window of 30 seconds. *See* Amendment No. 1, *supra* note 1. The Commission notes that while the Phlx is currently using the 30-second order exposure window, the change from the 15-second to 30-second window is not officially effective until the Commission approves this proposed rule change.

[5] The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES''). *See* Rule 229.

[6] Securities Exchange Act Release No. 35283 (Jan. 26, 1995), 60 FR 6333 (SR–Phlx–94–58).

below, the order will not be stopped by POES, but will instead be immediately executed at the improved price.

In addition, Supplementary Material .07 states that a member organization may choose to have such an order executed manually at or within the New York high-low range of the day. Pursuant to paragraph (b), orders greater than the sizes stated in Supplementary Material .05 as execution parameters for market orders (round-lots of 600–1,000 shares and PRLs of 601–1099 shares, or such greater size that the specialist agrees to accept) are not subject to the execution parameters of the Rule.[7]

Currently, the PACE market orders, subject to the execution standards explained above, are executable at the PACE Quote, meaning the best bid/offer at the time the order is received by PACE. In certain situations, these orders can be ''stopped'' at that price by the specialist, meaning that the order is guaranteed to receive at least that price. As explained above, the 30 second order exposure window provides an example of stopping stock in order to seek price improvement. The purpose of stopping an order is to seek a better price for the order, by probing the market further or facilitating the order in its proprietary account at that better price.

At this time, the Exchange proposes to adopt a double-up/down price improvement provision for PACE market orders up to a size determined by the Committee. The Exchange expects to provide the Commission with a fixed size shortly.[8] Thereafter, the Committee will review this threshold as needed, but no less than on a semi-annual basis. The purpose of the proposed provision is to provide automatic price improvement to eligible orders. As part of a continued effort to improve its execution parameters and promote the principle of best execution, the Exchange is proposing to adopt an automatic price improvement provision to apply in double-up and double-down situations.

Under the proposal, ''double-up/double-down'' is defined as an execution resulting in a trade that creates: (i) a plus or minus tick that is two minimum variation ticks (up or down) from the last regular way sale on the primary market; or (ii) a tick that is at least two (up or down) minimum variation ticks from the regular way sale previous to the last regular way sale in the security on the primary market. For example, where the PACE quote is 22½–¾, if the last sale was a down tick at ⅝, a double-up/double-down situation would not occur for a market order to buy because buying at ¾ is a single up of ⅛, but would for a sell order because selling at ½ is a down tick from ⅝, creating a double down tick. Where the market is 22¼–¾, with the last sale at ½, the provision would apply to a market order to buy or sell because buying at ¾ creates a two-variation up tick (two ⅛ ticks from ½) and selling at ¼ creates a two-variation down tick. If, with the market at 22⅜–⅝, the last sale was at ¾ and the previous sale to that was at ½, the provision would apply to a sell order because selling at ⅜ creates a two-variation down tick (more than two ⅛ ticks from ¾, but not a buy order because ⅝ is not more than ⅛ from the last sale of ¾ and is not the second consecutive up or down tick from the previous sale. If, again with the market at 22⅜–⅝, the last sale was at ⅝ and the previous sale to that was at ½, the provision would apply to a market order to sell because selling at ⅜ creates a two-variation down tick (from ⅝), but not a buy order because buying at ⅝ is simply a trade at the last price.

To explain the interaction between the 30 second order exposure window and the proposal at hand, assuming the market is 15½–¾ and the sale is 15½, an order to buy 500 would be subject to double-up/double-down price improvement because buying at ¾ creates a two variation up tick from ½ sale. The order would be automatically executed under the proposal at 15⅝ (if ⅛ is the minimum variation in that security) and no 30 second window would occur. If, on the other hand, the order was to sell 500 shares, double-up/double-down would not apply because selling at ½ does not create an up or down tick; this order would be POES-eligible such that the 30 second window would apply.

The Exchange is proposing to extend its price improvement initiative to double-up and double-down situations because these are particularly suitable for price improvement. Specifically, when the current market is two ticks away from the last sale price, with this trend continuing, as evidenced by consecutive up or down ticks, it is consistent with the role of the specialist to enter into stabilizing transactions on behalf of public customers. Instead of affording an automatic execution at the PACE quote, the proposal improves on that price. Thus, automatically executed orders continue to receive the important benefits of speedy execution and reporting, while also receiving price improvement. Heretofore, price improvement was synonymous with delay. Now, price improvement would be automatic for eligible orders. The Exchange notes that the proposal enables specialists to extend this innovative price improvement procedure to larger orders, and that the Committee may change the minimum size as competitive conditions warrant. In summary, the Exchange believes that this automatic price improvement feature adds an expedient benefit to PACE.

2. Statutory Basis

As explained above, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing automatic price improvement to eligible orders and extending the order exposure window to 30 seconds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission ay designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whehter the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[7] However, the odd-lot portion of PRLs of 601 or more shares shall be executed at the same price as the round-lot portion, or the last such portion executed.

[8] *See* Amendment No. 1, *supra note* 1.

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copyies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–25 and should be submitted by August 22, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19531 Filed 7–31–96; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Korea as a Priority Foreign Country in Telecommunications Trade

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of identification.

SUMMARY: The Acting United States Trade Representative (USTR) hereby identifies Korea as a priority foreign country under section 1374 of the Omnibus Trade and Competitiveness Act of 1988 (the Act). Upon such designation, the USTR is required to negotiate with the Government of Korea for the purpose of entering into a bilateral trade agreement which addresses specific negotiating objectives set by the USTR. If negotiations are unsuccessful, the USTR is required to take appropriate action to achieve U.S. negotiating objectives.

DATES: The identification of Korea as a priority foreign country was made on July 26, 1996.

FOR FURTHER INFORMATION CONTACT: Sean Murphy (202–395–6813), Office of Asia and Pacific Affairs, or Laura B. Sherman (202–395–3150), Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20508.

SUPPLEMENTARY INFORMATION: Section 1374 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3103) provides that the USTR may identify countries that maintain barriers that deny U.S. telecommunications products and services mutually advantageous market opportunities. In making identifications, the U.S. Trade Representative must take into account factors such as: (a) the nature and significance of the acts, policies and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms; (b) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market; (c) the potential size of the foreign market for telecommunications products and services of United States firms; (d) the potential to increase U.S. exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and (f) measurable progress being made to eliminate the objectionable acts, policies or practices.

In 1989, the U.S. Trade Representative identified Korea as a ''priority foreign country'' that denied U.S. telecommunications products and services providers ''mutually advantageous market opportunities.'' At that time, many of the specific negotiating objectives were focused on improving access for competitive U.S. telecommunications products and services to Korea Telecom(KT), which was the monopoly telecommunications service provider. In 1992, the United States and Korea concluded a series of agreements that improved access to procurement by KT and addressed concerns relating to the standards-setting process, provision of value-added services and the Korean government's approval of telecommunications equipment. As a result of those agreements, the USTR determined that Korea had met the negotiating objectives set out in 1989. Pursuant to section 1377 of the Act, the USTR has annually reviewed the effectiveness and operation of the telecommunications agreements reached with Korea and entered into subsequent agreements to address problems in implementation of them.

Changes in the Korean telecommunications market since 1992 have created new barriers for U.S. providers of telecommunications goods and services that are not covered by the existing agreements with Korea. KT is no longer the only service provider as competition by private firms and other government-owned entities is being allowed. Yet Korean Government intervention in procurements by private Korean companies and other practices cited by U.S. telecommunications products and services providers create effective barriers to access to the Korean market. The Korean Government's policies and actions relating to the promotion of domestic manufacturing of high-technology telecommunications products results in additional lost opportunities for U.S. suppliers. At the same time, Korean manufacturers have unrestricted access to the United States market for telecommunications products. Korean limitations on foreign ownership of telecommunications services are more restrictive than those of the United States. Korea firms are taking advantage of this more favorable access to increase their penetration into the U.S. telecommunications goods and services market.

The potential Korean market for telecommunications products and services is significant, particularly with the recent award of cellular and other licenses which is estimated to result in procurements of $6.5 billion. The total Korean market for telecommunications equipment and services during the 1996–2000 period is estimated at $100 billion. As U.S. telecommunications products and services are the most competitive in the world, there is tremendous potential to increase U.S. exports to the Korean market. Before deciding to identify Korea as a priority foreign country, the United States held intensive consultations with Korea beginning in March 1996, to achieve improved market access. No progress was made in eliminating Korea's objectionable policies and practices. As a result, to achieve mutually advantageous market opportunities as our respective telecommunications markets have evolved, I have identified Korea as a priority foreign country under Section 1374. Consequently, the United States will seek to negotiate an agreement with Korea that achieves U.S. objectives. If these negotiations are unsuccessful, action will be taken under section 1376(b) of the Act. The United States does not intend to use the full negotiating period provided in the Act to make a determination on next steps if it becomes clear that progress is not being made.

Charlene Barshefsky,

Acting U.S. Trade Representative.

[FR Doc. 96–19591 Filed 7–31–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board [1]

[STB Finance Docket No. 32991]

Pickens Railway Acquisition Company (d/b/a Pickens Railway Company) [2]—Acquisition Exemption—Norfolk Southern Railway Company

Pickens Railway Acquisition Company (d/b/a Pickens Railway Company) (PKHP), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by lease and grant of trackage rights from the Norfolk Southern Railway Company 19.27 route miles of railroad line. The lines to be leased extend between milepost V–117.77 and milepost V–116.85, at or near Belton, and between milepost V–115.15, at or near Belton, and milepost V–109.50, at or near Honea Path, a total of 6.57 miles, in Anderson County, SC. The lines over which trackage rights are to be granted extend between milepost 116.85 and milepost V–115.15, at or near Belton, and between milepost Z–0.00, at or near Belton, and milepost Z–11.00, at or near Anderson, a total of 12.70 miles, in Anderson County, SC. PKHP will operate the property.

The transaction is scheduled to be consummated on or after August 1, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32991, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on: Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934. Telephone: (202) 371–8037.

Decided: July 26, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–19562 Filed 7–31–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] By letter dated June 25, 1996, applicant's representative advised the Board that the name of the railroad which was the subject of the notice of exemption in *Pickens Railway Company—Acquisition and Operation Exemption—The Pickens Railroad Company,* STB Finance Docket No. 32897 (STB served May 1, 1996), should be changed to Pickens Railway Acquisition Company (d/b/a Pickens Railway Company).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

On-Line Filing Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice to seek On-Line Filing participation by On-Line service providers, transmitters, and software developers.

SUMMARY: Starting October 30, 1996 through January 1, 1997, the IRS will begin acceptance and software testing their On-Line Filing Program. And, by January 12, 1997, the IRS will have the On-Line Filing Program fully operational nationwide. Also, the IRS is expanding its program to accept both Federal and State returns nationwide to be filed electronically in one transmission to the IRS.

DATES: Parties interested in participating in the transmission and software development of Federal/State returns under the On-Line Filing Program should contact IRS On-Line Filing Analyst, Maxanne Rearich at (202) 283–0265 or write the Internal Revenue Service at the following address on or before September 3, 1996: Internal Revenue Service, Productivity Enhancements, Attn: On-Line Filing Analyst, T:S:E:P, Room 5037, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: The IRS Alternative Ways of Filing On-Line Filing Program Analyst at 202–283–0210.

SUPPLEMENTARY INFORMATION: Tax returns will be submitted to the IRS through a third party transmitter or an on-line service provider via computer, modem, and software. The third party must be able to reformat the data into the IRS proprietary format. The third party may provide tax forms or tax preparation software at a charge to the taxpayer (at their option), and may charge for their transmittal services (at their option). In order to be accepted into the program, representatives must submit an application (including appropriate fingerprint cards) and pass Suitability and Participant Acceptance Testing. IRS Publication 1345 will be provided to explain this process. No reimbursement for any costs connected with providing the requested information will be made by the IRS. This document is for informational purpose and does not constitute an Invitation For Bid (IFB), Request for Proposal (RFP), or Request For Quotation (RFQ) and is not to be construed as a commitment by the IRS.

Patricia M. Hudak,

Chief, Alternative Ways of Filing Office.

[FR Doc. 96–19598 Filed 7–31–96; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 61, No. 149
Thursday, August 1, 1996

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 TRANSPORTATION

Coast Guard

46 CFR Parts 70, 108, 133, 168, and 199

[CGD 84-069]

RIN 2115-AB72

Lifesaving Equipment

Correction

In rule document 96–11777 beginning on page 25272 in the issue of Monday, May 20, 1996 make the following corrections:

§70.10-3 [Corrected]

1. On page 25287, in the second column, in §70.10-34(a)(2)(i),in the last line ''charter'' should read ''charterer''.

§108.555 [Corrected]

2. On page 25295, in the second column, in §108.555, in the first line ''Liftboat'' should read ''Lifeboat''.

§133.10 [Corrected]

3. On page 25304, in the second column, in §133.10(a), in the last line ''lifeboats'' should read ''liftboats''.

§133.70 [Corrected]

4. On page 25305, in the second column, in §133.70(a), in the last line ''and'' should read ''or''.

§133.105 [Corrected]

5. On page 25306, in the third column, in §133.105(a)(1)(iii), in the fourth line ''160.151'' the first time it appears should read ''160.051''.

§133.120 [Corrected]

6. On page 25307, in the third column, in §133.120(b), insert ''must'' after ''craft''.

§133.153 [Corrected]

7. On page 25309, in the third column, in §133.153(b), in the third line ''time'' should read ''times''.

§199.05 [Corrected]

8. On page 25314, in §199.05(b), in the address for ''ASTM'' in the first line ''1903'' should read ''19103''.

§199.175 [Corrected]

9. On page 25324, in the second column, in §199.175(b)(17), ''hanle'' should read '''handle'', and in the same column paragraph ''(2)'' is correctly designated as paragraph ''(20)''. On the same page in the third column, in §199.175(b)(21)(i)(B), in the seventh line insert ''15'' before ''meters''.

§199.190 [Corrected]

10. On page 25328, in the third column, in §199.190(b)(1)(vii), ''of'' the first time it appears should read ''for''. And on page 25329, in the second column, in §199.190(g)(4), in the fourth line ''serving'' should read ''servicing''. In the same column, in §199.190(i), in the first line ''serving'' should read ''servicing''.

§199.211 [Corrected]

11. On page 25330, in the third column, in §199.211, paragraph ''(1)'' is correctly designated as paragraph ''(a)''.

§199.273 [Corrected]

12. On page 25332, in the first column, in §199.273(b), in the sixth line ''suites'' should read ''suits''.

§199.620 [Corrected]

13. On page 25335, in §199.620(j), in the table, in item ''2. Bilge Pumps'', the fourth column should read ''1''.

§199.630 [Corrected]

14. On page 25336, in §199.630(a), in the table, in the first column, the fourth entry ''19.203'' should read ''199.203'', and the fifth entry ''1992.211'' should read ''199.211''. On the same page in the third column, in §199.630(f), in the third line ''must'' should read ''may''. And on page 25337, in the third column, in §199.630(k)(1), in the last line ''199.199.211'' should read ''199.211''.

BILLING CODE 1505–01–D

Federal Register

Thursday
August 1, 1996

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 7, et al.

Federal Acquisition Regulation; Service Contracting; Proposed Rule and Proposed Collection; Comment Request Entitled Service Contracting; Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 15, 16, 37, 46, and 52

RIN 9000–AH14

[FAR Case 95–311]

Federal Acquisition Regulation; Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation to implement Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting (previously considered under withdrawn FAR Case 91–85, Services Contracting). The OFPP policy letter prescribes policies and procedures for use of performance-based contracting methods. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This action is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 30, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–311 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–311.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Parts 7, 15, 16, 37, 46, and 52 to establish policy for the Government's acquisition of services through the use of performance-based contracting methods.

B. Regulatory Flexibility Act

The proposed 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 of the burden associated with identifying uncompensated overtime hours and rates included in proposals and subcontractor proposals under the new provision 52.327–XX, Identification of Uncompensated Overtime. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule amends the Federal Acquisition Regulation (FAR) Parts 7, 15, 16, 37, 46, and 52 to implement the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, Service Contracting, and makes other revisions to part 37. One of the revisions implements the statutory requirement of section 834, Public Law 103–510, concerning uncompensated overtime. Although the statutory requirement applies only to DOD, both GSA and NASA have agreed the language is appropriate for Governmentwide use. The Regulatory Flexibility Act applies only to the language being added to the FAR concerning uncompensated overtime. The rule will affect all small businesses that submit offers for services estimated at $100,000 or more. Work hours provided, not the task to be performed, are addressed by this rule.

The requirements concerning uncompensated overtime in this proposed rule are currently in the Defense Federal Acquisition Regulation (DFARS). When this proposed rule is implemented in the FAR as a final rule, the DFARS language will be removed. There are no alternatives.

The Initial Regulatory Flexibility Analysis (IRFA) will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 95–311), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Public Law 104–13) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning the Service Contracting/ Solicitation provision, ''Identification of Uncompensated Overtime'', is being submitted to the Office of Management and Budget under 44 U.S.C. 3507(d), *et seq.* Public comments concerning this request will be invited through a Federal Register notice appearing in the *Notices* section of this issue.

List of Subjects in 48 CFR Parts 7, 15, 16, 37, 46, and 52

Government procurement.

Dated: July 25, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 7, 15, 16, 37, 46, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 7, 15, 16, 37, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.103 is amended by adding paragraph (q) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(q) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods should occur for follow-on acquisitions.

3. Section 7.105 is amended in the introductory text by adding a sentence at the end of the paragraph; by revising paragraphs (a)(1), (a)(4), and (b)(6); by redesignating paragraphs (b)(18) through (b)(20) as (b)(19) through (b)(21) and adding a new (b)(18) to read as follows:

7.105 Contents of written acquisition plans.

* * * Acquisition plans for service contracts shall describe the strategies for implementing performance-based contracting methods or provide rationale for not using those methods (see subpart 37.5).

(a) *Acquisition background and objectives.* (1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

* * * * *

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services

being acquired and state how they are related to the need.

* * * * *

(b) * * *

(6) *Product or service descriptions.* Explain the choice of product or service description types (including performance-based contracting descriptions) to be used in the acquisition.

* * * * *

(18) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.611 is amended in paragraph (c) by revising the second sentence to read as follows:

15.611 Best and final offers.

* * * * *

(c) * * * If discussions are reopened, the contracting officer shall, in accordance with agency procedures, issue an additional request for best and final offers to all offerors still within the competitive range.

* * * * *

PART 16—TYPES OF CONTRACTS

5. Section 16.104 is amended by adding paragraph (k) to read as follows:

16. 104 Factors in selecting contract types.

* * * * *

(k) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be more clearly defined.

6. Section 16.402–2 is amended by revising the heading and paragraph (a); by redesignating paragraphs (b) through (g) as (c) through (h) and adding a new paragraph (b); and by revising the newly designated paragraph (e) to read as follows:

16.402–2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (e.g., a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) Performance incentives may be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

* * * * *

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specified as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation), and performance standards (such as the quality levels of services to be provided).

* * * * *

7. Section 16.404–1 is amended by revising the introductory text of paragraph (b)(1), and the last sentence of paragraph (b)(2) to read as follows:

16.404–1 Cost-plus-incentive-fee contracts.

* * * * *

(b) *Application.* (1) A cost-plus-incentive-fee contract is appropriate for services or development and test programs when (i) * * *.

* * * * *

(2) * * * This approach may also apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

* * * * *

PART 37—SERVICE CONTRACTING

8. Section 37.000 is revised to read as follows:

37.000 Scope of part.

This part prescribes general policy and procedures for acquiring services by contract, and includes but does not limit coverage to only those services to which the Service Contract Act of 1965 applies (see 37.107). This part requires the use of performance-based contracting to the maximum extent practicable and prescribes policies and procedures for use of performance-based contracting methods; distinguishes between contracts for personal services and those for nonpersonal services; and includes special conditions to be observed in acquiring advisory and assistance services. Dismantling, demolition, or removal of improvements is covered in subpart 37.3. This part does not regulate the obtaining of services by direct appointment, under normal civil service employment procedures, or by cooperative agreement.

9. Section 37.101 is amended by adding, in alphabetical order, the definition ''Performance-based contracting'' to read as follows:

37.101 Definitions.

* * * * *

Performance-based contracting means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to the manner by which the work is to be performed or broad and imprecise statements of work.

* * * * *

10. Section 37.102 is amended by adding paragraph (d) to read as follows:

37.102 Policy.

* * * * *

(d) The preferred way of acquiring services is through use of performance-based contracting methods rather than on the basis of buying hours.

11. Section 37.103 is amended by redesignating paragraphs (d) and (e) and adding a new paragraph (d) to read as follows:

37.103 Contracting officer responsibility.

* * * * *

(d) Ensure that performance-based contracting methods are used to the maximum extent practicable when acquiring services.

* * * * *

12. Section 37.106 is amended by adding paragraph (c) to read as follows:

37.106 Funding and term of service contracts.

* * * * *

(c) Agencies with statutory multiyear authority shall consider the use of this authority to encourage and promote economical business operations when acquiring services.

13. Sections 37.115 through 37.115–3 are added to read as follows:

Sec.
37.115 Uncompensated overtime.
37.115–1 Scope.
37.115–2 General policy.
37.115–3 Solicitation provision.

* * * * *

37.115 Uncompensated overtime.

37.115–1 Scope.

This section implements Section 834 of Public Law 101–510 (10 U.S.C. 2331).

37.115–2 General policy.

(a) When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor

proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(b) Use of uncompensated overtime is not encouraged.

37.115–3 Solicitation provision.

Use the provision at 52.237–XX, Identification of Uncompensated Overtime, in all solicitations valued at $100,000 or more, for professional or technical services to be acquired on the basis of the number of hours to be provided.

14. Subpart 37.5, consisting of sections 37.500 through 37.502–5 is added to read as follows:

Subpart 37.5—Performance-Based Contracting

Sec.
37.500 Scope of subpart.
37.501 General.
37.502 Elements of performance-based contracting.
37.502–1 Statements or work.
37.502–2 Quality assurance.
37.502–3 Selection procedures.
37.502–4 Contract type.
37.502–5 Follow-on and repetitive requirements.

37.500 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based contracting methods. It implements OFPP Policy Letter 91–2, Service Contracting.

37.501 General.

Performance-based contracting methods provide the means to ensure that required performance quality levels are achieved and that with respect to fixed price contracts, payment is made only for services which meet contract standards. Performance-based contracts—

(a) Describe the requirements in terms of results required rather than the methods of performance of the work;

(b) Use measurable (i.e., terms of quality, timeliness, quantity, etc.) performance and quality assurance surveillance plans (see 46.103(a), and 46.401(a));

(c) Specify procedures for reduction of award fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407(f)); and

(d) Include performance incentives where appropriate.

37.502 Elements of performance-based contracting.

37.502–1 Statements of work.

Generally, statements or work shall define requirement in clear, concise language identifying specific work to be accomplished. Statements of work must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility (see 11.105). However, in the case of task order contracts, the statement of work need only define the scope of the overall contract (see 16.504(a)(4)(iii)). Each task issued under a task order contract shall clearly describe all services to be performed (see 16.505(a)(2)). When preparing statements or work, agencies shall, to the maximum extent practicable—

(a) Describe the work in terms of ''what'' is to be the required output rather than either ''how'' the work is to be accomplished or the number of hours to be provided;

(b) Enable assessment of work performance against measurable performance standards;

(c) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost effective methods of performing the work; and

(d) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.

37.502–2 Quality assurance.

Agencies shall develop quality assurance surveillance plans when acquiring services (see subpart 46.2). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.502–3 Selection procedures.

Agencies shall use competitive negotiations where appropriate to ensure selection of services that offer the best value to the Government, cost and other factors considered.

37.502–4 Contract type.

Contract types most likely to motivate contractors to perform at optimal levels shall be chosen (see subpart 16.1). To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being objectively measured.

37.502–5 Follow-on and repetitive requirements.

When acquiring services which previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable.

PART 46—QUALITY ASSURANCE

15. Section 46.103 is amended by revising paragraph (a) to read as follows:

46.103 Contracting office responsibilities.

* * * * *

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

* * * * *

16. Section 46.401 is amended by revising paragraph (a) to read as follows:

46.401 General.

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify—

(1) All work requiring surveillance, and

(2) The method of surveillance.

* * * * *

17. Section 46.407 is amended by revising the introductory paragraph (c)(1), and adding a new second and third sentence to (f) to read as follows:

46.407 Noncomforming supplies or services.

* * * * *

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer shall ordinarily reject supplies or services when the nonconformance is critical or major. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such supplies or services is determined by the contracting officer to be in the Government's interest. The contracting officer shall make this determination, based upon—

* * * * *

(f) * * * For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) which may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. * * *

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.237–XX is added to read as follows:

52.237–XX Identification of uncompensated overtime.

As prescribed in 37.115–3, insert the following provision:

Identification of Uncompensated Overtime (Date)

(a) *Definitions.* As used in this provision—

Uncompensated overtime means the hours worked in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act, without additional compensation. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

Uncompensated overtime rate is the rate which results from multiplying the hourly rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20 per hour would be converted to an uncompensated overtime rate of $17.78 per hour ($20.00×40 divided by 45 = $17.78).

(b) For any hours proposed against which an uncompensated overtime rate is applied, the offeror shall identity in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposals.

(End of provision)

[FR Doc. 96–19486 Filed 7–31–96; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 95–311]

Proposed Collection; Comment Request Entitled Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning service contracting.

DATES: Comment Due Date: September 30, 1996.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503. NW, Room 4037, Washington, DC 20405 and a copy to the FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405 at the address listed below.

FOR FURTHER INFORMATION CONTACT: Peter O'Such, Office of Federal Acquisition Policy, GSA (202) 501–1759.

SUPPLEMENTARY INFORMATION:

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes 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 General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405 and to the FAR Desk Officer.

The annual reporting burden is estimated as follows: Respondents, 19,906; responses per respondent, 1; total annual responses, 19,906; preparation hours per response, 30 minutes; and total response burden hours, 9,953.

Obtaining Copies of Proposals

Requester may obtain copies of the OMB application or justification from the FAR Secretariat. Please cite OMB clearance request regarding service contracting and FAR Case 95–311 in all correspondence.

Dated: July 26, 1996.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 96–19485 Filed 7–31–96; 8:45 am]

BILLING CODE 6820–EP–P

Reader Aids

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FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

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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Idaho and Oregon; published 7-29-96

Prunes (dried) produced in California; published 7-31-96

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Fishery conservation and management:

Alaska scallop; published 7-23-96

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National oil and hazardous substances contingency plan--

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LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2337/P.L. 104–168

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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August 16	September 3	September 16	September 30	October 15	November 14
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