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WHEN:	September 17, 1996 at 9:00 am.
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RESERVATIONS:	800–688–9889 (Federal Information Center)

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)
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Reader Aids
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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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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

7 CFR Parts 620 and 1467

RIN 0578–AA16

Wetlands Reserve Program

AGENCY: Commodity Credit Corporation, Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) and the Natural Resources Conservation Service (NRCS) are issuing its final rule for the Wetlands Reserve Program. This rule adopts as final the interim rule for the Wetlands Reserve Program published on June 1, 1995, responds to comments received from the public during the comment period, and incorporates specific changes required by the Federal Agriculture Improvement and Reform Act of 1996. The final rule will provide the process by which the Wetlands Reserve Program is administered by the NRCS.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Misso, (202) 720–3534.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is significant and was reviewed by the Office of Management and Budget under Executive Order 12866. Pursuant to § 6(a)(3) of Executive Order 12866, CCC and NRCS prepared a cost-benefit assessment of the potential impact of the program. The assessment concluded that several mechanisms at the State and National level of the agency are in place to ensure environmental benefits are maximized for each Federal dollar spent in the WRP. These mechanisms include a comprehensive prioritization and ranking procedure for each site offered for enrollment in the program and the requirement for locally-determined easement payment caps based on the agricultural land value. These mechanisms are developed and implemented on a state-by-state basis, with guidance and coordination from the National level of the agency, to ensure that regional and geophysical variations are addressed. The WRP costs data indicate that the procedures in place are promoting cost-effectiveness. Copies of the cost-benefit assessment are available upon request from Robert Misso, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20250.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither the CCC or NRCS are 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

It has been determined through an environmental review that this action is a modification of the existing WRP and is covered under the NRCS 1990 Environmental Assessment entitled, ''Wetlands Reserve Program—Environmental Assessment: Wetlands Reserve Provision of the Conservation Program Improvements Act of 1990.'' NRCS supplemented the environmental assessment to evaluate the changes to the program made pursuant to the Federal Agriculture Improvement and Reform Act of 1996. Copies of the environmental assessment with supplement are available upon request from: Robert Misso, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20250.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local officials. See notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wetlands Reserve Program—10.072.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0578–0013.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive. Furthermore, except as provided at 16 U.S.C. 3837a(e)(2), the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR Part 614 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the affects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

The NRCS published the current regulations for the Wetlands Reserve Program as an interim rule on June 1, 1995 (60 FR 28511). Enacted on April 4, 1996, the Federal Agriculture Improvement and Reform Act (the 1996 Act) authorized the enrollment of non-easement acres into the program through the use of restoration cost-share agreements and made other minor changes to the focus of the program. This final rule adopts the procedures outlined in the interim rule with the

addition of the few changes recommended during public comment and/or required by the 1996 Act. These changes are described below. Minor editorial changes have also been made for clarification and administrative purposes. The 1996 Act amended the Food Security Act of 1985 (the 1985 Act), Pub. L. 99–198, to provide that the WRP should be funded by CCC. Accordingly, this final rule is issued by CCC and NRCS.

Discussion of Comments

The NRCS received 16 comments concerning the interim rule during the 60-day public comment period that ended July 31, 1995. Respondents included national wildlife and conservation organizations, state agencies, public utilities, and one State farm organization. Two of the comments simply indicated support for the WRP and did not offer specific suggested changes.

Definitions

NRCS received two comments requesting slight modifications to the definitions in § 620.2 of the interim rule. One comment suggested that the definition for ''State Technical Committee'' be changed to allow the State Conservationist flexibility in delegating the chair position to other members of the committee. Currently, the State Conservationist may delegate the chair position to other NRCS personnel. Even so, implementation of the WRP at the state level remains the responsibility of the State Conservationist and therefore, no changes were made to the definition of State Technical Committee. The commenter also suggested that the definition of ''wetland functions and values'' be revised from ''social worth placed upon these characteristics'' to ''the socioeconomic value placed upon these characteristics.'' This change clarifies the intent of the interim rule and is adopted in this final rule.

NRCS also received a comment from a state forestry agency requesting that ''timber'' be included in the definition for ''wetland functions and values.'' NRCS did not adopt this change because the concept is incorporated in the current definition but the actual term is too specific for a nationwide program which enrolls many different types of wetlands with differing wetlands functions and values.

Another commenter indicated that the definition of ''Conservation Districts'' be modified to reflect better the mission of conservation districts. The NRCS adopts the suggested language as an improvement to the clarity of the definition. Additionally, section 620.3(f) is modified to include conservation districts by specific reference to clarify that NRCS values the special partnership that it has with conservation districts in the effort to improve the Nation's soil, water, and other natural resources, and NRCS will continue to seek input from conservation districts in the administration of its programs.

The Consolidated Farm Service Agency (CFSA) is now known as the Farm Service Agency (FSA). The rule is amended to reflect this name change.

Utility Easements

NRCS received two comments from utility companies, both of which expressed concern about how NRCS would approach the overlapping of a WRP easement with a utility easement. Utility easements are addressed during the title clearance process. During that process, the NRCS must determine whether: (1) NRCS can obtain a subordination agreement from the utility easement holder; (2) the exercise of the utility easement holder's rights would be consistent with the purposes of the WRP easement; or, (3) the exercise of the utility easement holder's rights would undermine the purposes for which the WRP easement would be established. If the NRCS is unable to obtain a subordination agreement from the utility easement holder and the exercise of that easement holder's rights would undermine the WRP easement, then the NRCS will not purchase a WRP easement on that property. One of these commenters also expressed support for the preference given permanent easements by the interim rule.

Water Quality

One utility company commenter requested that the impact on drinking water sources be a ranking factor for giving priority to purchasing a particular easement. One of the conservation organizations also urged that easements that provided water quality functions receive priority treatment. Because water quality is one of the wetland functions for which the easement is being established, the NRCS considers in its ranking process, directly or indirectly, the impact an easement would have on drinking water sources. Currently, each State Conservationist, in consultation with the State Technical Committee, will determine the weight that water quality in general, and impact on drinking water specifically, should receive in the ranking process. In the future, NRCS along with other agencies with wetland responsibilities will use a system (Hydrogeomorphic Modeling (HGM)) to evaluate wetland functions and values more objectively. NRCS will be better able to rank wetland sites for WRP that differ, thus providing for more consistency within and between States.

Compatible Uses

NRCS received four letters from State forestry organizations and one letter from a State farm organization which expressed opposition to language placed in the preamble to the WRP interim rule regarding compatible economic uses of the easement area as it related to forest management activities. NRCS also received a comment, however, from a conservation organization which supported the language used in the preamble, suggesting that some management approaches may not be consistent with the long-term protection of wetland resources.

According to the WRP authorizing language at 16 U.S.C. 3837a(d), compatible economic uses, including forest management, are permitted if consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established. In the preamble, NRCS simply indicated that harvesting methods which are not consistent with the long-term protection and enhancement of wetland functions and values on a particular easement area will not be considered a compatible use. Upon request by a landowner, the NRCS will evaluate the particular site on an easement area and will make a determination of what silvicultural approach, timing, intensity, and duration may be considered compatible with the wetland functions and values.

The document granting permission for forest management activities, or any other request for a compatible use, specifies the amount, method, timing, intensity, and duration of the use being granted. The NRCS, however, reserves its ability to modify a particular use should easement area conditions change. The management plan for an easement area is a ''living document'' and may be updated with additional compatible use requests as they are received from a landowner over time.

For example, the wetland functions and values that are established by the WRP restoration efforts are not available for mitigation purposes. However, at a later date, the landowner may request permission from the NRCS to enhance further the functions and values established by the WRP restoration effort. If the NRCS determines that the enhancement action is a compatible use and is clearly beyond the scope of restoration actions that would be feasible under any subsequent WRP

restoration efforts, the additional increment of functions and values which directly result from the landowner's approved enhancement action may be available to meet mitigation requirements under other federal, state, or local law.

No matter the use, the test remains: ''Is a particular proposed use consistent with the long-term protection and enhancement of the wetlands resources for which the easement was established and Federal funds expended?'' This approach is consistent with the WRP statute and does not require any change to the WRP rule.

Non-permanent Easements

The NRCS received four comments in which the commenters expressed concern that the interim rule gave such priority to the enrollment of permanent easements that the enrollment of non-permanent easements would be completely excluded from the program. One commenter expressed the concern that the priority placed on permanent easements overshadowed the other priority mandated by statute. In particular, the WRP authorizing legislation at 16 U.S.C. 3837c(d) provides that priority should be placed on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife.

Sections 620.8(b)(4) and (5) of the rule require that the NRCS consider whether any permanent easement offer has the ecological and cost characteristics which warrants acquisition before proceeding to acquire a non-permanent easement. The commenters recognized that non-permanent easements receive a different easement payment than a permanent easement, but either did not express specific opposition to the differentiated payment rate or expressed support for it. The 1996 Act amendments require, to the extent practicable after October 1, 1996, that NRCS enroll one-third of total program acres through the use of 30-year easements.

In response to the comments received and explicit direction from statute, NRCS has removed §§ 620.8(b)(4) and (5) and thus eliminated these particular constraints upon the enrollment of non-permanent easements. The 1996 amendments also provided that the restoration cost-share rate for a 30-year easement should be from 50 to 75 percent. The interim rule provided that the easement payment rate for a non-permanent easement should parallel the restoration cost-share rate. Therefore, § 620.8(b)(3) has been amended to indicate that the easement payment for a 30-year easement shall be between 50 percent and 75 percent of that which would have been paid for a permanent easement.

One commenter noted that the $50,000 annual easement payment limitation discriminated unduly against the acquisition of less than permanent easements. The interim final rule had established the $50,000 annual easement payment cap for all non-permanent easement acquisitions. However, by statute, the $50,000 annual easement payment limitation for non-permanent easements is a discretionary cap. As such, the NRCS has determined that in special circumstances involving projects with partnership funding or participation, a greater annual easement payment amount may be available. Additionally, the statute provides that payments are exempted from the payment limitation if the payment is received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by NRCS. The final rule is amended accordingly.

Section 620.17 addresses the administrative appeal procedures to be used when a person desires review of an administration determination concerning eligibility for participation. The interim final rule for the National Appeals Division (NED) Rules of Procedures, 60 FR 67298 (December 29, 1995), amended § 620.17 to include reference to 7 CFR Part 780 and 7 CFR Part 11. The NAD interim final rule also amended 7 CFR Part 614, the NRCS appeals procedures originally referenced in § 620.17. Part 614, as amended, references the other appeal procedures at 7 CFR Part 780 and 7 CFR Part 11, and their additional mention in § 620.17 is therefore redundant. This final rule amends § 620.17 to remove the redundant reference to 7 CFR Part 780 7 CFR Part 11.

Discussion of the Federal Agriculture Improvement and Reform Act

The Federal Agriculture Improvement and Reform Act (the 1996 Act) was enacted on April 4, 1996. The 1996 Act amended the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, to re-authorize the Environmental Conservation Acreage Reserve Program as the umbrella conservation program encompassing the Conservation Reserve Program (16 U.S.C. 3831–3836), the newly-created Environmental Quality Incentives Program (16 U.S.C. 3840), and the Wetlands Reserve Program (16 U.S.C. 3837 *et seq.*). Under the Environmental Conservation Acreage Reserve program, the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements and other conservation needs.

The 1996 Act effects several changes to the administration of the WRP. In particular, the 1996 Act amendments authorize the enrollment of land into the Wetlands Reserve Program until 2002, establishes a program cap at 975,000 acres, and provides that eligible land must maximize wildlife benefits and wetland functions and values.

The 1996 Act amendments also require that, to the extent practicable beginning October 1, 1996, one-third of the remaining program acres be enrolled through the use of permanent easements, one-third through the use of 30-year easements, and one-third through the use of restoration cost-share agreements. Further, after October 1, 1996, no new permanent easement can be enrolled until at last 75,000 acres of non-permanent easement are enrolled in the program. Section 721 of the agriculture Appropriations Act, enacted August 6, 1996, stated that this condition on enrollment ''shall be deemed met upon the enrollment of 43,333 acres through the use of temporary easements: Provided further that the Secretary shall not enroll acres * * * through the use of new permanent easements in fiscal year 1998 until the Secretary has enrolled at least 31,667 acres in the program through the use of temporary easements.'' In recognition that the NRCS must enroll lands that maximize wildlife benefits and other wetland functions and values, achieve cost-efficient restoration, and provide the three identified enrollment approaches, the NRCS will emphasize enrolling lands that have the least likelihood of being reconverted. The NRCS will work with landowners and other conservation partners to achieve these lasting benefits for wetland resources.

Through several public forums across the county, the NRCS received comments from the public about the new conservation programs and the changes to existing conservation programs as a result of the enactment of the 1996 Act. The NRCS greatly appreciates the input provided by the public through the forums and written comments submitted to the agency. The NRCS will consider these comments during the formulation of its policies and guidelines.

Many of the changes to the WRP required by the 1996 Act are directives to the agency which do not impact the

WRP rule. Some of the amendments, however, require specific, non-discretionary changes to the WRP regulations. Since these changes are mandatory and do not require agency interpretation, the CCC and NRCS have incorporated them into this final rule. The following sections and parts are impacted:

Section 620.2

The 1966 Act made several changes to other programs which relate to WRP, including the wetland conservation provisions, 7 CFR Part 12, and the Conservation Reserve Program, 7 CFR Parts 704 and 1410. Therefore, certain definitions are removed from this part to avoid any inconsistencies with the implementation of these other provisions.

Section 620.3

The 1996 Act requires the Department of Agriculture to avoid duplication of conservation plans required for the implementation of the highly erodible land conservation provisions of the Food Security Act of 1985, CRP, and the WRP. In response to this requirement, § 620.3(h) is amended to include coordination of the development of conservation plans as an additional goal in the administration of the WRP. The 1996 Act amendments also provide that areas may be designated as conservation priority areas to help producers comply with nonpoint source pollution requirements and other conservation needs. Therefore, a new sentence is added to § 620.3(h) that the Secretary of Agriculture may designate areas as conservation priority areas to assist landowners to meet nonpoint source pollution requirements and other conservation needs.

Section 620.4

The 1996 Act amendments authorize the enrollment of acres into the WRP through the use of restoration cost-share agreements. Therefore, the first sentence of § 620.4 has been amended to include the term ''restoration cost-share agreements.''

The 1996 Act amendments links eligibility for WRP easement or cost-share payments to the highly erodible land and wetland conservation provisions of the 1985 Act, 16 U.S.C. 3801 *et seq.*, 7 CFR part 12. Therefore, landowner eligibility, § 620.4(c), is amended to reflect that a person may not be eligible for participation in WRP if the requirements of 7 CFR part 12 have not been met.

The 1996 Act amendments specify that the 25 percent county enrollment cap and the 10 percent county easement cap only apply to acres enrolled in the Conservation Reserve Program (CRP) and the WRP, and not all acres enrolled in the Environmental Conservation Acreage Reserve Program. Therefore, the reference to the Environmental Conservation Acreage Reserve Program in § 620.4(b)(1) has been replaced with specific reference to the CRP and the WRP. In addition to consideration of any adverse effect on the local economy, the 1996 Act amendments require that a waiver from the county caps can only be approved if operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812. Therefore, § 620.4(b)(2) has been amended to incorporate this new criterion.

The 1996 Act amendments expanded the eligibility criteria to require specifically that land enrolled in the program maximize wildlife benefits. Therefore, § 620.4(d) is amended to incorporate the additional eligibility criterion.

The 1985 Act provides that pasture land established to trees under the CRP is ineligible for enrollment in the WRP. Even though such lands were not enrolled in the program, specific mention of this ineligibility provision was not made in the interim rule. Section 620.4(e) is amended to incorporate specifically this statutory provision.

Section 620.7

The 1996 Act amendments require that after October 1, 1996, to the extent practicable, the NRCS enroll one-third of the acres through the use of permanent easements, one-third of the acres through the use of 30-year easements, and one-third of the acres through the use of restoration cost-share agreements. The NRCS has considered land enrolled in the program at the time the NRCS determines that a landowner's offer is eligible, funds are committed to acquire that particular easement, and the landowner agrees to continue in the program. Because the 1996 Act amendments require that the NRCS track the total acres enrolled through the use of permanent easements, 30-year easements, and restoration cost-share agreements, § 620.7(b) is amended to clarify that enrollment occurs at this stage in the process.

Sections 620.8 and 620.13

The 1996 Act amends 16 U.S.C. 3837a(f) to eliminate the specific reference to lump sum payments for permanent easements only, and further provides that annual compensation for any easement may be in not less than 5 nor more than 30 annual payments of either equal or unequal size. Therefore, § 620.8(e) and § 620.13(b)(1), which incorporated the original statutory provisions as to payments, are amended to reflect this specific change in law regarding easement payments.

Section 620.9 and 620.10

To reflect that the NRCS shall enroll land into the WRP through the use of restoration cost-share agreements, section 620.9 is amended by adding specific reference to restoration cost-share agreements and making associated editorial adjustments to this new type of enrollment mechanism. Additionally, the 1996 Act amendments provide that the cost-share rate for restoration associated with 30-year easements shall be no less than 50 nor more than 75 percent. Section 620.9(a) incorporates this new statutory provision.

Likewise, the requirements in § 620.10, such as the granting of an easement to the United States, are specific to enrollment into the program through the use of an easement and not restoration cost-share agreements. Therefore, the heading to § 620.10 reflects that the section is no longer applicable as ''Program requirements'' but now more appropriately refers to easement enrollment requirements.

Section 620.11

The 1996 Act amendments provide that the development of the restoration plan shall be made through the local NRCS representative, in consultation with the State Technical Committee. The 1996 Act amendments also removes the specific requirement that consultation with the Department of the Interior means agreement at the local level and consultation at the State level. Therefore, NRCS has added these changes to § 620.11 by 1) by removing the regulatory language in paragraph (a) which required agreement with the U.S. Fish and Wildlife Service at the local level, and 2) replacing the language with a new paragraph (a) which now references the development of the plan by the local NRCS representative.

Section 620.14

During the implementation of the program under the interim rule, confusion arose regarding the language in § 620.14 about ''associated'' contract. The term ''associated'' was intended to mean a contract ''associated with the program'' other than the easement deed. As stated, the term ''associated'' inadvertently created the mistaken conclusion that the contract is attached to the easement deed. Therefore, the term ''associated'' has been removed to improve the clarity of this section.

Parts 620 and 1467

Because funds of the Commodity Credit Corporation shall be used for administration of the WRP, the WRP rule is moved from Part 620 to Part 1467 of Title VII of the CFR. Furthermore, certain administrative responsibilities may be assumed by other agencies with the Department of Agriculture, and the rule is modified accordingly.

List of Subjects in 7 CFR Part 1467

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

Accordingly, the interim rule establishing 7 CFR part 620 which was published at 60 FR 28511 on June 1, 1995, is adopted as a final rule with the following changes:

1. In 7 CFR, chapter VI, part 620 is re-designated as chapter XIV, part 1467, and the sections are re-designated as set forth below:

Old section	New section
620.1	1467.1
620.2	1467.3
620.3	1467.2
620.4	1467.4
620.5	1467.5
620.6	1467.6
620.7	1467.7
620.8	1467.8
620.9	1467.9
620.10	1467.10
620.11	1467.11
620.12	1467.12
620.13	1467.13
620.14	1467.14
620.15	1467.15
620.16	1467.16
620.17	1467.17
620.18	1467.18

PART 1467—WETLANDS RESERVE PROGRAM

2. The authority citation for re-designated part 1467 continues to read as follows:

Authority: 16 U.S.C. 590a, *et seq.;* and 16 U.S.C. 3837, *et seq.*

3. Section 1467.1 is amended by revising the heading to the section to read as follows:

§ 1467.1 Applicability.

* * * * *

4. Section 1467.2 is amended by revising paragraphs (c), (f), and (h) and amending paragraph (g) by revising the second and third sentences to read as follows:

§ 1467.2 Administration.

* * * * *

(c) As determined by the Chief and the Administrator of the Farm Service Agency, the NRCS and the Farm Service Agency will seek agreement in establishing policies, priorities, and guidelines related to the implementation of this part.

* * * * *

(f) The Department may enter into cooperative agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist the NRCS with educational efforts, easement management and monitoring, outreach efforts, and program implementation assistance.

(g) * * * The NRCS may consult with the Forest Service, other Federal or State agencies, conservation districts or other organizations in program administration. No determination by the U.S. Fish and Wildlife Service, the Forest Service, Federal or State agency, conservation district, or other organization shall compel the NRCS to take any action with the NRCS determines will not serve the purposes of the program established by this part.

(h) The Chief may allocate funds for such purposes related to: special pilot programs for wetland management and monitoring; acquisition of wetland easements with emergency funding; cooperative agreements with other Federal or State agencies for program implementation; coordination of easement enrollment across State boundaries; coordination of the development of conservation plans; or, for other goals of the WRP found in this part. The Department may designate areas as conservation priority areas where environmental concerns are especially pronounced and to assist landowners in meeting nonpoint source pollution requirements and other conservation needs.

5. Section 1467.3 is amended by removing the definitions for ''Farmed wetland'', ''Farmed wetland pasture'', and ''Prior converted cropland''; by revising the definitions for ''Conservation District'', ''Conservation Reserve Program'', ''Contract'', ''Person'' and the introductory text of ''Wetlands functions and values''; and by adding a definition for ''Department'' to read as follows:

§ 1467.3 Definitions.

* * * * *

Conservation District is a subdivision of a State government organized pursuant to applicable State law to promote and undertake actions for the conservation of soil, water, and other natural resources.

Conservation Reserve Program (CRP) means the program administered by the Commodity Credit Corporation pursuant to 16 U.S.C. 3831–3836.

* * * * *

Contract means the document that specifies the obligations and rights of any person who has been accepted for participation in the program.

* * * * *

Department means the United States Department of Agriculture (USDA) and includes the Commodity Credit Corporation or any USDA agency or instrumentality delegated program responsibility by the Secretary of Agriculture.

* * * * *

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

* * * * *

Wetland functions and values means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including: * * *

* * * * *

6. Section 1467.4 is amended by revising the first sentence of paragraph (a), and revising paragraphs (b)(1), the second sentence of (b)(2), the introductory text of (c), paragraph (d)(2), the introductory text of (d)(3), and paragraph (e)(2) to read as follows:

§ 1467.4 Program requirements.

(a) *General.* Under the WRP, the Department may purchase conservation easements from, or enter into restoration cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. * * *

(b) * * *

(1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired under the CRP and the WRP.

(2) * * * Such a waiver will only be approved if it will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* The NRCS may determine that a person is not eligible to participate in the WRP or receive any WRP payment because the person did not comply with the

provisions of 7 CFR part 12. To be eligible to enroll an easement in the WRP, a person must: * * *

* * * * *

(d) * * *

* * * * *

(2) Land shall only be considered eligible for enrollment in the WRP if the NRCS determines, in consultation with the U.S. Fish and Wildlife Service, that:

(i) Such land maximizes wildlife benefits and wetland values and functions;

(ii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration; and

(iii) Such land meets the criteria of paragraph (d)(3) of this section.

(3) The following land may be eligible for enrollment in the WRP, which land may be identified by the NRCS pursuant to regulations and implementing policies pertaining to wetland conservation found at 7 CFR part 12, as:

* * *

* * * * *

(e) * * *

(2) Land that contains timber stands established under a CRP contract or pasture land established to trees under a CRP contract.

* * * * *

7. In § 1467.6, paragraphs (a) through (c) are re-designated as paragraphs (b) through (d), a new paragraph (a) is added to read as follows:

§ 1467.6 Establishing priority for enrollment of properties in WRP.

(a) The NRCS shall place priority on the enrollment of those lands that will maximize wildlife values (especially related to enhancing habitat for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

* * * * *

8. Section 1467.7 is amended by revising the heading to the section and the heading to paragraph (b) to read as follows:

§ 1467.7 Enrollment of easements.

* * * * *

(b) *Effect of letter of intent to continue (enrollment).* * * *

* * * * *

9. Section 1467.8 is amended by

(a) Revising paragraph (b)(3);

(b) Removing paragraphs (b)(4), (b)(5), and (e)(2);

(c) Re-designating paragraph (e)(3) as (e)(2);

(d) Revising re-designated paragraph (e)(2); and,

(e) Revising paragraph (h).

The revisions read as follows:

§ 1467.8 Compensation for easements.

* * * * *

(b) * * *

(3) Easement payments for non-permanent easements will be less than those for permanent easements because the quality and duration of the ecological benefits derived from a non-permanent easement are significantly less than those derived from a permanent easement on the same land. Additionally, the economic value of the easement interests being acquired is less for a non-permanent easement than that associated with a permanent easement. An easement payment for the short-term 30-year easement shall not be less than 50 percent nor more than 75 percent of that which would have been paid for a permanent easement.

* * * * *

(e) * * *

(2) Annual easement payments may be made in no less than 5 annual payments and no more than 30 annual payments of equal or unequal size.

* * * * *

(h) *Payment limitation on non-permanent easements.* With respect to non-permanent easements, the annual amount of easement payments to any person may not exceed $50,000 except for:

(1) Payments made pursuant to projects involving partnership funding or participation; or

(2) Payment received by a State, political subdivision, or agency thereof in connection with agreements entered into under a special wetland and environmental enhancement program carried out by that entity that has been approved by NRCS.

* * * * *

10. In § 1467.9, the first sentence of the introductory text of paragraph (a) and paragraph (a)(2) are revised to read as follows:

§ 1467.9 Cost-share payments.

(a) The Department may share the cost with landowners of restoring the enrolled land as provided in the WRPO.* * *

* * * * *

(2) On enrolled land subject to a non-permanent easement or restoration cost-share agreement, the Department shall offer to pay not less than 50 percent nor more than 75 percent of such costs. Restoration cost-share payments offered by NRCS for the short-term, 30-year easements shall be 50 to 75 percent.

* * * * *

11. In § 1467.10, the heading for the section and paragraph (d)(5) are revised to read as follows:

§ 1467.10 Easement participation requirements.

* * * * *

(d) * * *

(5) Have the option to enter into an agreement with governmental or private organizations to assist in carrying out any landowner responsibilities on the easement area;

* * * * *

12. In § 1467.11, paragraph (a) is revised and a new sentence is added at the end of paragraph (b) to read as follows:

§ 1467.11 The WRPO development.

(a) The development of the WRPO shall be made through the local NRCS representative, in consultation with the State Technical Committee, and with consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District.

(b) * * * The WRPO shall be developed to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values will result.

13. In § 1467.12, paragraph (b) is revised to read as follows:

§ 1467.12 Modifications.

* * * * *

(b) *WRPO.* Insofar as is consistent with the easement and applicable law, the State Conservationist may approve modifications to the WRPO that do not affect provisions of the easement in consultation with the landowner and the State Technical Committee and following consideration of site specific technical input from the U.S. Fish and Wildlife Service and the Conservation District. Any WRPO modification must meet WRP program objectives, and must result in equal or greater wildlife benefits, wetland functions and values, ecological and economic values to the United States. Modifications to the WRPO which are substantial and affect provisions of the easement will require agreement from the landowner and require execution of an amended easement.

14. Section 1467.13 is amended by revising paragraph (b)(1) to read as follows:

§ 1467.13 Transfer of land.

* * * * *

(b) * * *

(1) For easements with multiple annual payments, any remaining easement payments will be made to the original landowner unless the

Department receives an assignment of proceeds.

* * * * *

15. In § 1467.14, remove the word ''associated'' from paragraphs (a) and (c).

16. Section 1467.17 is amended by revising paragraph (a) to read as follows:

§ 1467.17 Appeals.

(a) A person participating in the WRP may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in 7 CFR part 614.

* * * * *

17. In addition to the amendments set forth above, in 7 CFR part 1467 remove the words ''Consolidated Farm Service Agency'' wherever they appear and add, in their place, the words ''Farm Service Agency''.

18. In addition to the amendments set forth above, in 7 CFR part 1467 remove the word ''NRCS'' whenever it appears and add, in its place, the word ''Department''.

Signed at Washington, D.C. on August 8, 1996.

Paul Johnson,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

[FR Doc. 96–20623 Filed 8–13–96; 8:45 am]

BILLING CODE 3410–16–M

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 96–005DF]

RIN 0583–AC08

Net Weight Statement for Shingle Packed Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule; request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by removing an obsolete labeling requirement for certain sizes of shingle packed bacon. This rule applies the same requirements for net weight statements to all sizes of shingle packed bacon.

DATES: This rule will be effective on October 15, 1996 unless FSIS receives written adverse comments or written notice of intent to submit adverse comments on or before September 13, 1996. If FSIS receives adverse comments or notice of intent to submit adverse comments within the scope of this rule, FSIS will withdraw this rule and publish a proposed rule for public comment.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, Docket #96–005DF, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 254–2590.

SUPPLEMENTARY INFORMATION:

Background

FSIS has been petitioned to amend the Federal meat inspection regulations by removing an obsolete labeling requirement for certain sizes of shingle packed bacon. (Shingle packed bacon is sliced bacon packed in overlapping rows usually contained in a rectangular package.)

Section 317.2(h)(13) of the Federal meat inspection regulations requires that the labeling of packages of bacon *not* in 8-ounce, 1-pound, or 2-pound containers display the net quantity of the contents (net weight statement) with the same prominence as the largest feature of the label. In addition, the statement must be printed in a color of ink that contrasts sharply with the label's background.

Section 317.2(h)(9)(v) provides that shingle packed bacon packed in 8-ounce, 1-pound, or 2-pound containers is exempt from the labeling requirements regarding: (1) the placement of the net weight statement within the bottom 30 percent of the principal display panel, and (2) the expression of the net weight statement in terms of both pounds and ounces, if the net weight statement appears in a conspicuous manner on the principal display panel.

Historically, shingle packed bacon was sold in 8-ounce, 1-pound, or 2-pound packages. Over time, bacon manufacturers began packing bacon of different weights in the same size containers used for the traditional 8-ounce, 1-pound, and 2-pound packages of bacon. For example, a 12-ounce package of bacon was packed in the same size container as a 1-pound package of bacon. To ensure that consumers were aware that there was less product in the same-size container, FSIS promulgated regulations to highlight to consumers the net weight statement on these packages. However, with heightened consumer awareness, the use of nutritional labeling, and the use of unit pricing at the retain level, FSIS agrees with the petitioner that this labeling requirement is no longer needed.

Therefore, FSIS is amending the Federal meat inspection regulations by removing the labeling requirement for shingle packed bacon packed in other than 8-ounce, 1-pound, or 2-pound containers in § 317.2(h)(13). FSIS is also removing the language that refers to 8-ounce, 1-pound, and 2-pound packages of shingle packed bacon from § 317.2(h)(9)(v). This action provides the same requirements for net weight statements for all sizes of shingle packed bacon.

Effective Date

This rule is being published without a prior proposal because this action is viewed as noncontroversial, and FSIS does not anticipate any adverse public comments will be received. This rule will be effective 60 days after the date of publication in the Federal Register unless FSIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

If no adverse comments are received, FSIS will publish a notice in the Federal Register confirming that the rule is effective on the date indicated.

Executive Order 12866 and Effect on Small Entities

This rule is considered not significant and therefore has not been reviewed by the Office of Management and Budget.

The Administrator, FSIS, has determined that this rule will not have a significant impact on a substantial number of small entities. The rule merely removes an obsolete labeling requirement for shingle packed bacon packed in other than 8-ounce, 1-pound, or 2-pound containers.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

List of Subjects in 9 CFR Part 317

Meat inspection, Food labeling.

For the reasons discussed in the preamble, 9 CFR part 317 is amended as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.2 is amended by removing paragraph (h)(13) and revising paragraph (h)(9)(v) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(h) * * *

(9) * * *

(v) Sliced shingle packed bacon in rectangular packages is exempt from the requirements of paragraphs (h)(3) and (h)(5) of this section regarding the placement of the statement of the net quantity of contents within the bottom 30 percent of the principal display panel, and that the statement be expressed both in ounces and in pounds, if the statement appears in a conspicuous manner on the principal display panel.

* * * * *

Done at Washington, DC, on: August 6, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96–20540 Filed 8–13–96; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–130; Special Conditions No. 25–ANM–120]

Special Conditions: Cessna Model 550 (Serial Number 550–0801 and on); High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Cessna Model 550 airplane, serial number 550–0801 and on. These airplanes utilize new avionics/electronic systems, such as an Electronic Flight Instrument Systems (EFIS), which perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 6, 1996. Comments must be received on or before September 13, 1996.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–130, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–130. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–130.'' The postcard will be date stamped and returned to the commenter.

Background

On June 30, 1994, Cessna Aircraft Company, One Cessna Boulevard, Wichita, Kansas, applied for a type design change to the Model 550. The Model 550 airplanes are pressurized, executive transport type airplanes, powered by two fuselage-mounted turbofan engines and approved under Type Certificate No A22CE. As changed, these airplanes will differ from previously approved Model 550 airplanes, in part, by the installation of Pratt & Whitney Canada PW530A engines with thrust reversers; trailing link landing gear; an Electronic Flight Instrument System (EFIS); digital anti-skid system; structural, electrical, and hydraulic modifications to support the engine and landing gear change; and a weight increase. The applicant intends to introduce the changes in production beginning with serial number 550–0801.

Amended Type Certification Basis

Under the provisions of § 21.101 of 14 CFR part 21, Cessna Aircraft Company must show that the Model 550, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A22CE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations, including those referenced in A22CE, that apply to the Model 550, serial number 550–0801 and on, are as follows:

(1) Part 25 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 25–1 through 25–17; with the following exceptions: Section 25.305, as amended by Amendments 25–1 through 25–54. Section 25.1401, as amended by Amendments 25–1 through 25–27. Section 25.1387, as amended by Amendments 25–1 through 25–30. Sections 25.1303(a)(2) and 25.1385(c), as amended by Amendments 25–1 through 25–38.

Sections 25.125, 25.251, 25.337, 25.493, 25.731, 25.733, 25.735, 25.867, 25.869, 25.901, 25.903, 25.933, 25.934, 25.939, 25.943, 25.951, 25.952, 25.1001, 25.1041, 25.1043, 25.1045, 25.1091, 25.1093, 25.1103, 25.1121, 25.1123, 25.1143, 25.1163, 25.1165, 25.1181, 25.1183, 25.1185, 25.1189, 25.1195, 25.1197, 25.1203, 25.1205 (revoked), 25.1207, 25.1305, 25.1316, 25.1322, 25.1326, 25.1337, 25.1351, 25.1438, 25.1521, 25.1549, and 25.1551, as amended by Amendments 25–1 through 25–82.

(2) Part 36 of the Federal Aviation Regulations effective December 1, 1969, plus any amendments in effect at the time of certification.

(3) Part 34 of the Federal Aviation Regulations effective September 10, 1990, plus any amendments in effect at the time of engine manufacture.

(4) For Electronic Flight Instrument Systems only, compliance must be demonstrated for the additional regulations: Sections 25.1301, and 25.1303(b), as amended by Amendments 25–1 through 25–38; 25.1309, 25.132 (a), (b), (d) and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendments 25–1 through 25–41.

These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 550, serial number 550–0801 and on, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for an amended type certificate to include a new model or to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1). Similarly, these special conditions would also apply to Model 550 airplanes with serial numbers earlier than 550–0801, if those airplanes are modified to incorporate the same novel or unusual design feature.

Novel or Unusual Design Features

The Cessna Model 550, serial number 550–0801 and on, incorporates new avionics/electronic systems, such as an electronic flight instrument system (EFIS), that perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, a special condition is needed for the Cessna Model 550, serial number 550–0801 and on, as modified by Cessna Aircraft Company, which requires that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	(Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to those Cessna Model 550 airplanes that utilize avionics/electronics systems which perform critical functions. Should Cessna apply at a later date for an amended type certificate to include a new model or to modify any other model included on type Certificate No. A22CE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1). Although the manufacturer intends to introduce these changes in production beginning with serial number 550–0801, the special conditions would be equally applicable to earlier airplanes if those airplanes are modified to incorporate the same novel or unusual design features.

Conclusion

This action affects only certain design features on Cessna Model 550 airplanes, serial number 550–0801 and on. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for this special condition is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna Model 550, when equipped with avionics/electronics systems which perform critical functions.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special condition, the following definition applies: *Critical functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–20756 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AWP–40]

Establishment of Class E Airspace; Coolidge, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Coolidge, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 23 and a VHF Ominidirectional Range/Distance Measuring Equipment (VOR/DME) approach to RWY 05 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Coolidge Municipal Airport, Coolidge, AZ.

EFFECTIVE DATE: 0901 UTC October 10, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On June 27, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Coolidge, AZ (61 FR 33390). This action will provide adequate controlled airspace to accommodate a GPS RWY 23 and a VOR/DME RWY 05 SIAP at Collidge Municipal Airport, Coolidge, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposals were received. Class E airspace designations are published in paragraph 6005 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 E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Coolidge, AZ. The development of a GPS SIAP to RWY 23 and a VOR/DME SIAP to RWY 05 has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 23 and VOR/DME. RWY 05 SIAP at Coolidge Municipal Airport, Coolidge, AZ.

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. Therefore, this regulaton—(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 10034; 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 14 CFR 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Coolidge, AZ [New]

Coolidge Municipal Airport, AZ
(Lat. 32°56′00″ N, long. 111°25′32″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 32°19′55″ N, long. 111°24′00″ W; thence west to lat. 32°17′20″, long. 111°44′30″ N; thence north to lat. 32°58′50″ N, long. 111°46′00″ W; thence northeast to lat. 33°08′10″ N, long. 111°10′20″ W; thence southwest to lat. 32°58′50″ N, long. 111°04′15″ W, thence southwest to the point of beginning.

* * * * *

Issued in Los Angeles, California, on August 1, 1996.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–20761 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretation; Solicitation of comment.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is publishing its views with respect to the use of electronic media for transmission and delivery of Disclosure Documents,

reports and other information by commodity pool operators (''CPOs''), commodity trading advisors (''CTAs''), and associated persons (''APs'') thereof, under the Commodity Exchange Act and the Commission's rules promulgated thereunder. This interpretative guidance is intended to assist CPOs, CTAs and their respective APs in using electronic media to comply with their disclosure and reporting obligations, and to encourage continued research, development and use of electronic media for such purposes. The Commission also is announcing a pilot program for the electronic filing of CPO and CTA Disclosure Documents with the Commission. The Commission seeks comment on the issues discussed in this release and any related issues, including other areas as to which the Commission could provide guidance concerning use of electronic media for filing with the Commission or delivery to customers of required reports.

DATES: This interpretation is effective on October 15, 1996. Comments should be received on or before October 15, 1996.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Deputy Director/Chief Counsel, Gary L. Goldsholle, Attorney/Advisor, Christopher W. Cummings, Attorney/Advisor, or Tina Paraskevas Shea, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington D.C. 20581. Telephone number: (202) 418–5450. Facsimile number: (202) 418–5536. Electronic mail: tm@cftc.gov

SUPPLEMENTARY INFORMATION:

I. Background

By this release, the Commission is publishing its views with respect to the use of electronic [1] media by CPOs, CTAs and their respective APs,[2] for transmission and delivery of Disclosure Documents, reports and other information in a manner consistent with the Commodity Exchange Act (the ''CEA'' or ''Act'')[3] and the Commission's regulations promulgated thereunder.[4]

The Expanding Electronic Marketplace. In recent years, personal computers have gained widespread entry into the mass market.[5] Advances in personal computers and related electronic media technology have enabled large sectors of the general population to use computers to access the Internet, proprietary on-line services, and multi-media applications such as those stored on CD–ROMs. The use of personal computers to access the Internet and proprietary on-line services has been growing at a spectacular rate.[6] This trend appears likely to continue or even accelerate.[7]

The growing use of electronic media is significantly affecting the financial services industry. Specifically, it has caused many changes in the way industry participants gather, store, and communicate information. Electronic media enable private investors as well as market professionals to enjoy ready access to ''real-time'' trade data and financial news. Similarly, industry professionals and private investors can now quickly perform complex analyses of trade and market data. Both private investors and market professionals use electronic mail and message boards to communicate and disseminate information.

Within the financial services industry, a wide range of businesses, both large and small, have established a presence on the World Wide Web and on the Internet. For instance, many securities brokerage houses now allow customers to place trades and to review account information over the Internet.[8] Many mutual fund companies have established sites on the World Wide Web or on proprietary on-line services. These sites allow potential investors to download prospectuses, transfer investments among multiple mutual funds, and complete subscription applications without having to wait for such materials to arrive by postal mail.[9]

The futures industry has similarly been affected by developments in electronic media. Many CTAs (including publishers of market newsletters), CPOs, FCMs and IBs have established a presence on the Internet, generally by operating or otherwise being listed on the World Wide Web. Use of the World Wide Web and the Internet appears to be an increasingly important component of the business strategies of futures professionals. For the most part, these registrants currently are using electronic media to supplement their traditional paper-based activities. However, many registrants have expressed strong interest in using electronic media to comply with various requirements of the Act and Commission regulations. In particular, registrants have indicated that they are interested in electronically providing Disclosure Documents, obtaining acknowledgments of receipt of Disclosure Documents, compiling indices of CTA and CPO performance and Disclosure Documents, and filing Disclosure Documents and other materials with the Commission. The rapid technological advances in computers and growth of electronic media have brought the regulatory issues raised by these developments to the forefront of the Commission's agenda.[10]

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[1] For purposes of this release, the term ''electronic'' media refers to media such as audiotapes, videotapes, facsimiles, CD–ROM, electronic mail, bulletin boards, Internet World Wide Web sites and computer networks (*e.g.*, local area networks and commercial on-line services) used to provide documents and information required by or otherwise affected by the Commodity Exchange Act and the regulations promulgated thereunder.

[2] The Commission is not addressing the use of electronic media by other Commission registrants, such as futures commission merchants (''FCMs'') and introducing brokers (''IBs'') at this time but has such issues under review.

[3] 7 U.S.C. 1 *et seq.* (1994).

[4] Commission rules are found at 17 CFR Ch. I (1996). The rules governing the obligations of CPOs and CTAs, including rules relating to disclosure and reporting, recordkeeping and advertising, are found at 17 CFR Part 4 (1996).

[5] Current estimates are that between thirty-five and thirty-nine percent of households in the United States possess a computer. G. Christian Hill, ''Tally of Homes With PCs Increased 16% Last Year,'' *Wall Street Journal*, May 21, 1996, at B10; ''Too Good to Last,'' *Economist*, March 23, 1996, at 62.

[6] The actual number of Internet users in the United States above age 16 is the focus of debate and has been estimated between 16.4 and 22.0 million, as of August 1995. Peter H. Lewis, ''New Estimates in Old Debate on Internet Use,'' *New York Times*, April 17, 1996, at D1.

[7] Daniel Akst, ''Postcard from Cyberspace: Proof of Skyrocketing Net Growth,'' *Los Angeles Times*, February 28, 1996, at D4. The trend towards Internet usage appears to be so strong that certain participants in the computer industry are developing ''network computers,'' low cost computers whose primary purpose will be to connect to the Internet. Don Clark, ''Oracle Chief to Unveil: 'Info Appliances,' But Will Consumers Want to Buy Them?'' *Wall Street Journal*, May 16, 1996, at B1.

[8] Estimates of the number of on-line brokerage accounts indicate rapid growth. According to one source, there were 412,000 on-line accounts in 1994, and the number is expected to surpass 1.3 million by 1998. Greg Miller and Tom Petruno, ''For Investors, the Internet has Promise, Perils,'' *Los Angeles Times*, June 4, 1996, at A1, A6.

[9] ''Mutual Funds in Cyberspace,'' *The Investment Lawyer*, Vol. 2, No. 10, November 1995.

[10] As Acting Chairman John E. Tull noted in March 14, 1996, in testimony before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies of the House Committee on Appropriations:

The Commission is actively working to address market participants' interest in using new technologies to increase their efficiency and competitiveness. These efforts include: consulting

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Electronic media, most dramatically the Internet and the World Wide Web, present regulators with a complex of issues that differ significantly from those presented by traditional paper-based or telephonic activities. The Internet allows users to reach millions of people at very low cost, permitting real-time, simultaneous communication by large numbers of persons, with varying degrees of anonymity. Communications over the Internet can combine text, audio and video. Another unique characteristic of the Internet is that information posted thereon can be updated or changed instantaneously, and Internet sites can be created and eliminated virtually at will. The Internet also is geographically unconstrained; a party using the Internet can be located anywhere, even internationally.[11] As the Internet's popularity has grown, so too has the volume of information that can be readily accessed via so-called ''search engines.'' Finally, Internet sites can be connected to other sites through hyperlinks, which enable users to move readily from place to place within a website or to a new website.

A number of federal agencies, including the Securities and Exchange Commission (''SEC''), have begun to formally address regulatory issues presented by activities involving the Internet. In October 1995, the SEC issued an interpretative release addressing electronic delivery of documents such as prospectuses, annual reports to shareholders, and proxy solicitation materials by issuers, third parties (such as persons making tender offers or soliciting proxies) and persons acting on their behalf. In that release, the SEC set forth its views on the requirements and standards to be met by securities issuers and mutual funds using electronic media to deliver such documents to persons who consent to such delivery.[12] In a subsequent release dated May 15, 1996, the SEC extended its guidance with respect to electronic media to broker-dealers, transfer agents, investment advisers and persons acting on their behalf.[13] In these releases, the SEC articulated its view that in most instances, ''the use of electronic media should be at least an equal alternative to the use of paper-based media.'' [14]

In addition, the SEC has indicated that, subject to certain conditions, Spring Street Brewing Co. (''Spring Street'') may operate Wit-Trade, an on-line bulletin board-based trading system on the World Wide Web that allows individuals to buy and sell shares of Spring Street stock over the Internet. Spring Street had voluntarily suspended trading on Wit-Trade on March 20, 1996, apparently due to concern that the system, as then structured, did not satisfy SEC requirements.[15] However, in a March 22, 1996, letter to Spring Street, the SEC's Divisions of Corporation Finance and Market Regulation expressed support for securities market innovations such as Wit-Trade, which they described as ''an innovative mechanism that has the potential to provide [Spring Street] shareholders with greater liquidity in their investments.'' [16] However, to ensure protection of public investors, the SEC also imposed several conditions upon Wit-Trade's resumption of trading. In order to continue its on-line trading system, Wit-Trade, which is not a registered broker-dealer, was required to use an independent agent to handle investor funds, to supplement the information provided about Spring Street on the World Wide Web in order to highlight the risks inherent in investing in illiquid and speculative securities and to provide on the website a transaction history, including price and volume data, to facilitate informed investment decisions. Finally, the SEC stated that Spring Street was required to maintain and deliver an offering circular in accordance with Regulation A.[17]

Regulatory programs to address new commercial uses of the Internet and World Wide Web have been accompanied by law enforcement actions to address apparent abuses involving the use of such media. The Federal Trade Commission (''FTC'') has brought several enforcement actions involving fraud on the Internet. On May 29, 1996, the FTC announced that it had obtained a federal court order against Fortuna Alliance, L.L.C., temporarily halting an alleged pyramid scheme advertised over the Internet that had taken in over $6 million.[18] On June 12, 1996, the FTC obtained a preliminary injunction, keeping in effect the identical provisions of the temporary restraining order. The FTC has also established an electronic forum

with industry representatives concerning current and prospective uses of the Internet for communicating with the public and with other futures professionals; creating a program for monitoring solicitation activity on the Internet; and developing mechanisms for electronic filing of reports and other ways to facilitate innovative uses of computer technology in a manner consistent with customer protection.

[11] The Commission recognizes that the worldwide availability of material placed on the Internet presents important issues concerning the scope of the regulatory and enforcement jurisdiction of individual nations. For example, solicitation materials posted on the Internet by CPOs and CTAs registered with the Commission and acting in compliance with Commission rules may be accessed by persons in foreign jurisdictions under whose laws such a solicitation may not be lawful. The International Organization of Securities Commissions (''IOSCO''), an international association of securities and futures regulatory and self-regulatory organizations, has several initiatives underway to address these issues. In particular, IOSCO is examining a number of issues, including the enforcement and other regulatory challenges for securities and futures regulators presented by the increasing use of public computer networks. The Commission invites comment from interested persons as to how the issues created by application of multiple jurisdictions' laws to an international mode of communication such as the Internet should be resolved.

[12] 60 FR 53458 (October 13, 1995). In a companion release, the SEC proposed technical revisions to certain of its rules in light of the interpretations proffered in the interpretative release. 60 FR 53468 (October 13, 1995). Much of the guidance provided in the SEC interpretative release took the form of fifty-one examples of particular uses of electronic media by securities professionals.

[13] 61 FR 24644 (May 15, 1996).

[14] 60 FR at 53459. On January 7, 1996, the North American Securities Administrators Association, Inc. adopted a resolution concerning offerings of securities over the Internet. In general, this resolution encouraged states to exempt certain offerings over the Internet from registration provisions and to take appropriate steps to allow such offers and sales to occur subject to specified conditions.

[15] *See* Rob Wells, ''SEC Allows Brewer to Trade Stock on Internet,'' *Washington Times*, March 26, 1996, at 5B. The developer of Spring Street Brewing Co. has created Wit Capital Corporation to act as agent in the public offering of securities through the Internet and to create an electronic marketplace for the shares of such companies. ''Brewer That Began IPOs on Web Plans On-Line Exchange,'' *The Washington Post*, April 3, 1996, at G1.

[16] Spring Street Brewing Co., SEC No-Action Letter, [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,201 (April 17, 1996).

[17] 17 CFR 230.251 *et seq.* (1996). Regulation A is an exemption from registration available to issuers that are neither Securities Exchange Act of 1934 reporting companies or investment companies and permits interstate offerings of up to $5 million during any twelve month period, including up to $1.5 million in non-issuer resales. An offering pursuant to Regulation A requires that the issuer file an ''offering circular'' with the SEC.

The SEC also noted that its regulatory authority over Wit-Trade extends to some categories of Wit-Trade's users. Specifically, the SEC cautioned that Spring Street should inform users of the system that if they post quotations simultaneously on both the Buyer and Seller Bulletin Boards, they may be considered a ''dealer'' and required to register as such and comply with the requirements applicable to broker-dealers under the federal securities laws. The SEC also stated that any transactions facilitated through Wit-Trade would be subject to the antifraud provisions of the federal securities laws.

Further, by letter dated June 21, 1996, the SEC's Divisions of Market Regulation, Investment Management and Corporation Finance granted approval to Real Goods Trading Corp. (''RGTC''), permitting it to operate a bulletin board system on the World Wide Web whereby persons may post notices regarding purchases or sales of RGTC stock in light of representations that, *inter alia*, RGTC will not receive any compensation for creating or maintaining the system and that it will not receive, transfer or hold any funds or securities in connection with its operation of the system. Real Goods Trading Corp., 1996 SEC No-Act. Lexis 566 (June 24, 1996); Jeffrey Taylor, ''SEC to Allow Firm to Run Market For Its Own Shares on the Internet,'' *Wall Street Journal*, June 27, 1996, at B12.

[18] *FTC* v. *Fortuna Alliance, L.L.C.*, Civ. Docket 96–CV–799, W.D. Wa. 1996.

intended to develop a set of voluntary principles applicable to the use of consumer information in electronic media generally.[19] This electronic forum is presently soliciting comment from all sources, including consumers, industry representatives, and privacy advocates.

NASD Regulation, Inc. (''NASDR''), the self-regulatory organization responsible for oversight of securities firms and professionals and over-the-counter securities trading, recently issued a Notice to Members addressing supervisory and other obligations related to the use of electronic media.[20] In that notice, NASDR explained that electronic communications are subject to the same approval, recordkeeping, and filing requirements as communications by other means and emphasized that all communications by its members with the public remain subject to the antifraud provisions of the federal securities laws. Further, it explained that members must comply with the NASD's suitability rule, disclose material adverse facts to customers, and implement appropriate supervisory procedures to ensure that their associated persons do not misuse electronic communications or engage in misconduct while on-line. NASDR also solicited comment from members concerning their use of electronic media and whether there is a need for ''prophylactic regulatory measures.'' [21]

Regulatory Implications of New Electronic Media. Like its sister agencies, the CFTC has been alert to the potential regulatory and law enforcement implications of the Internet and electronic media generally. For example, like businesses and other government agencies, the Commission is using electronic media to increase public awareness of and access to its services. The Commission initiated its website on the World Wide Web on October 10, 1995. The Commission now regularly provides information on its website concerning a broad range of topics, including enforcement actions, opinions and orders, commitments of traders reports, interpretative letters, press releases, sanctions in effect and reparations proceedings (including the necessary forms to institute reparations claims).[22]

In addition to its World Wide Web site, the Commission has undertaken a variety of initiatives relating to the application of technology and electronic media to regulated futures activities. The Commission recently concluded five market automation briefings, soliciting input from four exchanges and from the brokerage community, through representatives of the Futures Industry Association.[23] In these briefings, the exchanges described the current status and planned improvements to clearing, order-routing, trade tracking, surveillance and automation systems. The brokerage representatives identified technological enhancements, including electronic transaction confirmations and recordkeeping capacity, relevant to the continuing efficiency and competitiveness of United States futures markets.

To date, the Commission has facilitated the use of electronic media by providing relief from or interpretations of regulatory requirements in a variety of contexts. Recently, the Division of Trading and Markets issued a ''no-action'' letter and a related advisory allowing FCMs to use facsimile transmissions to send daily confirmation statements to certain institutional customers in fulfillment of their obligations under Commission Rule 1.33(b).[24] The Division of Trading and Markets also has issued an advisory concerning the attestation of financial reports filed electronically with a self-regulatory organization.[25] Pursuant to Advisory 28–96, FCMs and IBs who file financial reports electronically with a self-regulatory organization that operates a program for electronic filing approved by the Commission, such as the Chicago Board of Trade (''CBT'') or the Chicago Mercantile Exchange (''CME''), may use a personal identification number (''PIN'') in lieu of a signature, which will be deemed to be the equivalent of a manual signature for purposes of attestation under Commission Rule 1.10(d)(4).[26] The PIN, therefore, will constitute a representation by the user that the information contained in the financial report is true, correct and complete. The Division of Trading and Markets also is encouraging the CME and the CBT to license the electronic filing system developed jointly by these exchanges, and currently used by their members to file financial reports electronically, at reasonable cost to other markets and is evaluating whether to require electronic filing for all but certified financial statements. The Division of Trading and Markets also has encouraged the use of electronic media to achieve greater efficiency by allowing firms to directly enter certain registration filings in connection with the National Futures Association (''NFA'') direct entry program.[27]

The Commission's Division of Enforcement (''DOE'') is actively monitoring activity on the Internet and proprietary on-line services. The DOE investigates and prosecutes violations of the CEA by persons who use electronic media, as well as any other media, to accomplish such violations. For instance, the Commission recently brought an action in the United States District Court for the Southern District of Florida against certain persons alleging fraud in connection with the solicitation and receipt of funds for the purchase and use of computer-generated trading systems.[28] The complaint alleges that the defendants in that case marketed the systems in national newspapers and on the Prodigy on-line service Money Talk Bulletin Board. On October 16, 1995, the District Court issued an *ex parte* order freezing defendants' assets. On October 25, 1995, the defendants, without admitting or denying the allegations, consented to the entry of an Order of Preliminary Injunction which, among other things, prohibited them from acting as CTAs without benefit of registration.

In addition, the DOE will shortly introduce a section of the Commission's website through which members of the public can provide it with information regarding possible violations of the CEA

[19] *See* FTC's website at http://www.ftc.gov/ftc/privacy.htm.

[20] NASD Notice to Members 96–50, July 1996. In a previous notice, NASDR provided guidance to its members concerning the regulatory implications of certain conduct occurring over various electronic media, including the World Wide Web, ''bulletin boards,'' electronic mail, ''chat rooms,'' and hyperlinked sites. ''Ask the Analyst About Electronic Communications,'' *NASD Regulatory & Compliance Alert*, April 1996.

[21] NASD Notice to Members 96–50, July 1996.

[22] The address of the site is http://www.cftc.gov. It is visited by thousands of users each month.

[23] Advisory No. 25–96 (May 13, 1996); ''Market Automation Examined,'' [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) Report Letter No. 528 at 5 (June 7, 1996).

[24] Advisory No. 22–96, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,679 (May 2, 1996). Throughout this Interpretation the Commission refers to various staff interpretative letters and advisories. These letters and advisories represent interpretations by the Commission's staff and do not necessarily represent interpretations by the Commission. The Commission intends to issue a separate Federal Register release addressing electronic communications and disclosures by FCMs and IBs. Prior to the issuance of such a release, the Commission's Division of Trading and Markets will continue to resolve issues in this area on a case-by-case basis.

[25] Advisory No. 28–96, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996).

[26] The Commission approved rules of the CME and CBT permitting electronic filing of financial reports prior to issuing this advisory. *See* CME Rule 970 (approved by the Commission on September 27, 1993); CBT Capital Rule 311, Appendix 4B (approved by the Commission on September 21, 1993). The Commission expects to propose its own rules on this subject in the near future.

[27] 57 FR 60799 (December 22, 1992).

[28] *CFTC* v. *Maseri, et al.*, Case No. 95–6970–Civ-Davis (S.D. Fla. 1995).

occurring on the Internet or elsewhere. This section will be an important part of the DOE's and the Commission's surveillance and information gathering activities over the Internet.

The Commission's Office of Information Resources Management (''OIRM'') performs ongoing assessments of the opportunities offered by the use of new technology to streamline or otherwise improve the effectiveness of the Commission's programs. For example, in addition to implementing and maintaining the Commission's website, OIRM has recently provided a firewall-protected connection between the Commission's internal network and the Internet. This connection provides all Commission staff with Internet electronic mail addresses, thereby enabling them to receive industry inquiries electronically and to respond to such inquiries more rapidly. It also provides select Commission staff with full web-browsing capabilities to facilitate surveillance and other information gathering activities.

In sum, the Commission supports the use of new technologies to enhance efficiency and competitiveness and believes that electronic media can provide an effective alternative to traditional paper-based media. The Commission encourages industry participants to consult with the Commission as they develop and refine electronic media applications in order to assure that transitions to electronic media occur efficiently and without loss of regulatory protections.

The Commission is issuing this release to provide guidance concerning a range of issues presented by existing and contemplated uses of electronic media by the managed futures industry. The release addresses: the applicability of the CEA and Commission regulations to the use of electronic media, including registration duties and other regulatory requirements applicable to persons who use electronic media to provide commodity trading advice or to solicit managed futures accounts or pool participations; the criteria and requirements applicable to CPOs and CTAs seeking to use electronic media for the delivery of Disclosure Documents, reports and other information; and a mechanism whereby CPOs and CTAs may use electronic media to file Disclosure Documents with the Commission. The Commission invites comment on each of these topics, and any related issues of interest to futures professionals or other market users.

II. Applicability of the Commodity Exchange Act and Regulations Thereunder to Use of Electronic Media: Registration and Other Requirements for Commodity Trading Advisors and Commodity Pool Operators

The advent of electronic media, such as the Internet, as common modes of commercial communication has given rise to numerous questions concerning the applicability of existing regulatory structures to these media. Although this release is principally directed toward the use of electronic media by managed futures professionals, the Commission also wishes to emphasize that, as a general matter, the nature and effect of a person's conduct, not the medium of communication chosen, determine the applicability of the Commission's regulatory framework. Consequently, persons using electronic media are subject to the same statutory and regulatory requirements under the Commission's regulatory framework as persons employing other modes of communication.

This conclusion follows from the breadth of the mandates codified in the CEA, as well as their express terms. The definition of CPO, for example, includes ''any person engaged in a business that is *of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives* from others funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, *or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market* * * *.'' [29] Similarly, the CTA definition includes ''any person who * * * for compensation or profit, engages in the business of advising others, *either directly or through publications, writings or electronic media,* as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market * * *.'' [30] Section 4l of the Act confirms the national public interest in the activities of CTAs and CPOs whose advice to and arrangements with clients ''take place and are negotiated and performed by *the use of the mails and other means and instrumentalities of interstate commerce.*'' [31] More generally, Section 18 of the Act directs the Commission to establish and maintain, ''as part of its ongoing operations,'' research and information programs to determine, *inter alia,* ''the feasibility of trading by computer, and *the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself* for purposes of improving, strengthening, facilitating, or regulating futures trading operations.'' [32]

However, although Congress's intent that the Act should encompass and accommodate new technologies is clear, market participants may nevertheless benefit from guidance as to the manner in which the Act and Commission rules apply in specific contexts. This release is intended to facilitate the use of electronic information and communications systems by Commission registrants in conducting their businesses and in making required filings with the Commission. In particular, this release is intended to facilitate the use of electronic communication systems by clarifying the manner in which Commission rules, generally written to address either oral or hardcopy written communications, may be translated into the context of electronic media.

As a threshold matter, the Commission wishes to emphasize the registration duties of persons using electronic media to engage in activity subject to the Act and Commission regulations. The Act's registration requirements for commodity professionals are a cornerstone of the regulatory framework enacted by Congress. Determinations as to whether a person must register, and in what capacity, require an evaluation of all of the ''circumstances surrounding such person's commodity-related activities.'' [33] Section 4m(1) of the Act makes it unlawful for any CTA or CPO, unless excluded or exempted from registration, ''to make use of the mails or any instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator'' [34] without being registered under the Act. Thus, the Act requires the registration of persons who use any instrumentality of interstate commerce, including

[29] 7 U.S.C. 1a(4) (emphasis added).

[30] 7 U.S.C. 1a(5)(A) (emphasis added). The definition of the term ''commodity trading advisor'' was amended by the Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2204 in order to refer expressly to ''electronic media.'' Similarly, the exclusions from the CTA definition for newspaper reporters and publishers were amended to add ''electronic media'' to the exclusion for print media.

[31] 7 U.S.C. 6l (emphasis added).

[32] 7 U.S.C. 22 (emphasis added).

[33] 48 FR 35248, 35253 n.27 (August 3, 1983).

[34] 7 U.S.C. 6m(1).

electronic media, in connection with their business as a CTA or CPO.

A. Commodity Trading Advisory Activities

1. Trading Advice Communicated Electronically

The Act defines the term ''commodity trading advisor'' to include, subject to specified exclusions, any person who: ''(i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in'' futures contracts, commodity options, or leverage transactions; or ''(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).'' [35] Thus, subject to certain statutory exclusions, any persons who for compensation or profit engage in the business of advising others concerning trading in futures or commodity options or of issuing analyses or reports concerning such trading, are deemed CTAs under the Act.

A threshold requirement of the CTA definition is that the trading advisory activity be undertaken for ''compensation or profit.'' This does not, however, require that ''the 'compensation or profit' flow directly from the person or persons advised * * * [i]t is sufficient that the compensation or profit is to result wholly or in part from the furnishing of the services specified in section [1a(5)].'' [36] Accordingly, this requirement has been interpreted by Commission staff to include direct or indirect forms of compensation or profit received by a CTA, including the attraction of new customers or maintenance of a customer base.[37]

The term ''commodity trading advice'' has been interpreted expansively and includes particularized trading advice that recommends specific transactions or trading methodologies as well as advice concerning the ''value of or advisability'' of trading in futures or commodity options. Consequently, one who advises others concerning the value of using futures generally, without providing specific trading recommendations, nonetheless is providing commodity trading advice. Further, persons may provide commodity trading advice even though they ''are neither directly or indirectly involved in the solicitation of funds or trades or the trading of accounts.'' [38] For example, Commission staff have found that a publication that includes general information on trading in commodity interests, detailed information on price forecasting and specific advice on market conditions that signal when persons should trade in the futures markets provides trading advice.[39] Commodity trading advice may include information already contained in the public domain [40] and is not limited to trading ''recommendations.'' [41]

In applying the CTA definition, the Commission has recognized that commodity trading advice may be provided through all forms of communication, including electronic media. This conclusion is compelled by the Act's express terms; as noted by Commission staff, ''[i]n distinguishing between trading advice offered directly or through publications, writings or electronic media, [the statutory CTA definition] is clearly intended to reach 'impersonal,' indirect forms of trading advice and explicitly recognizes that commodity trading advice may be given in forms other than personalized trading advice.'' [42]

Commission staff have applied the CTA definition to ''persons who make commodity interest trading advice available to the public through mass media, such as newsletters, telephone hotlines or electronic devices including computer software, rather than through direct communication with individual persons.'' [43] Staff letters have applied the CTA definition to, for example, designers and distributors of computer software programs that generated commodity trading recommendations or strategies; [44] a professor who received compensation for applying research and periodically updating a computer model used for trading commodity interests; [45] the distributor of software that analyzed a United States dollar index; [46] and the licensor of a computer software program who had developed and licensed to more than fifty licensees various computerized trading systems that allowed the licensees to input data setting the parameters of futures transactions.[47] These staff positions are consistent with applications of the CTA definition to other impersonal or indirect forms of communication, such

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[35] 7 U.S.C. 1a(5)(A).

[36] CFTC Interpretative Letter No. 75–11, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,098, at 20,763 n.6 (Office of the General Counsel, Trading and Markets, September 15, 1975).

[37] CFTC Interpretative Letter No. 76–10, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,157 (Office of the General Counsel, April 22, 1976); CFTC Interpretative Letter No. 75–6, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,093 (Office of the General Counsel, Trading and Markets, August 13, 1975). For example, Commission staff have found the ''compensation or profit'' requirement of the CTA definition satisfied where a CTA's customers receive commission rebates from an FCM that are then credited toward payment of the CTA's commodity information service subscription fees. Division of Trading and Markets Interpretative Letter No. 95–51, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,420 (May 1, 1995).

[38] Division of Trading and Markets Interpretative Letter No. 96–56, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ _____ (July 8, 1996).

[39] *Id.*

[40] Unpublished letter from Andrea M. Corcoran, Director, Division of Trading and Markets, dated March 14, 1990 (''even assuming that information contained in the [publication] is available elsewhere in the public domain, it is our opinion that the CTA definition includes an enterprise which is devoted to compiling advice, reports or analyses of others with respect to futures markets and to publishing such data in a book such as the [publication] on a regular basis'').

[41] Unpublished letter from Susan C. Ervin, Deputy Director/Chief Counsel, Division of Trading and Markets, dated March 14, 1989 (noting that the absence of interpretative or analytical information does not exclude a person from the definition of a CTA). ''The plain terms of the statute indicate * * * that Congress intended to cover all types of analyses and reports * * *, not just those that advise, interpret or make recommendations.'' CFTC Interpretative Letter No. 76–25, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,239 (Office of the General Counsel, December 6, 1976). Thus, a person may provide commodity trading advice despite neither analyzing nor making any predictions or representations about the information provided.

[42] Division of Trading and Markets Interpretative Letter No. 95–101, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,565 (November 21, 1995). The Commission has recently filed complaints addressing certain forms of alleged CTA activity conducted by means of electronic media. For example, the Commission and the Attorney General for the State of Florida jointly filed a complaint, which was later amended to include a new defendant, in *CFTC* v. *JDI Limited Inc. d/b/a Future Vision*, Case No. 95–6221–Civ–Gonzalez (S.D. Fla.), charging defendants with, *inter alia*, acting as unregistered CTAs and violating the antifraud provisions of the Act in the marketing, sale and support of a computerized trading program. Similarly, the Commission's complaint in *In the Matter of R&W Technical Services, Ltd.*, CFTC Docket No. 96–3, alleged that the respondents had marketed and sold a computerized futures trading system generating trading signals for transactions in various financial futures contracts without being registered as CTAs. The complaint also charged the parties with violations of antifraud provisions of the Act by falsely advertising money-back guarantees and hypothetical profits in magazines, telephone solicitations and written promotional materials. The Commission expresses no opinion on the merits or ultimate outcome of these cases.

[43] Division of Trading and Markets Interpretative Letter No. 95–68, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,498 (August 10, 1995).

[44] *Id.*

[45] Division of Trading and Markets Interpretative Letter No. 94–51, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,115 (May 10, 1994).

[46] Division of Trading and Markets Interpretative Letter No. 93–27, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,704 (April 2, 1993).

[47] Division of Trading and Markets Interpretative Letter No. 84–9, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,092 (March 1 and April 6, 1984).

as newsletters and other print media [48] and telephone hotlines.[49]

The Commission wishes to make clear that the nature and scope of regulation of trading advisory activity under the CEA depends upon the type of activity in which the advisor engages. For example, persons who provide commodity trading advice but do so in a manner that is solely incidental to the conduct of certain businesses or professions, such as banking, news publishing or news reporting, are wholly excluded from the definition of a CTA. Persons who provide commodity trading advice but do not qualify for a statutory exclusion from the CTA definition due to the fact that their trading advice is not incidental to the conduct of their business or profession as, *e.g.*, a publisher, are required to register as CTAs and maintain specified records; however, unless they are managing customer accounts, they are not subject to the requirement to deliver a Disclosure Document. Finally, persons who manage customer accounts, *i.e.*, direct or guide accounts,[50] are required to register with the CFTC, deliver a Disclosure Document to each prospective customer at or before the time at which he solicits such customer, obtain a signed acknowledgment of receipt of the Disclosure Document from the customer and maintain specified books and records. Persons who solicit managed accounts for a CTA must be registered as an AP of the CTA and provide the required Disclosure Document at the time of or prior to solicitation of the customer. The Commission provides guidance on a case-by-case basis concerning the application of these requirements to particular business activities or arrangements.

a. Exclusions From the CTA Definition

The CEA provides an exclusion from the CTA definition for banks and trust companies (and their employees), news reporters, columnists and editors, lawyers, accountants and teachers, floor brokers or FCMs, publishers or producers of print or electronic data of general and regular dissemination (and their employees), contract markets, and ''such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.'' [51] These exclusions apply only if the furnishing of such services by the specified persons ''is solely incidental to the conduct of their business or profession.'' [52]

(1) Publisher or Producer of Electronic Data of General and Regular Dissemination

The CEA's express exclusion from the CTA definition for publishers and producers of print or electronic media applies only if two criteria are met.[53] First, a person must be ''the publisher or producer of any print or electronic data of *general and regular dissemination*.'' (emphasis added). Second, ''the furnishing of such services * * * [must be] solely incidental to the conduct of their business or profession.'' As construed by CFTC staff, the phrase ''general and regular dissemination'' applies to publications whose ''*primary purpose [is] to disseminate news and other items appealing to the interest of all segments of the business and financial community.*'' [54] In contrast, ''if a publication concentrates on disseminating analyses, reports or recommendations bearing on a narrow area of interest, such as * * * commodity futures trading,'' the staff has construed the publication not to be ''a bona fide business or financial publication of general and regular circulation'' for purposes of the statutory exclusion from the CTA definition.[55]

(2) Solely Incidental

In defining ''solely incidental,'' the Commission does not rely on a specific numerical standard or percentage of revenues or business but, rather, considers the nature of the overall business and the factual context in which the advisory services are rendered.[56] Thus, ''a planned or periodic expression of views as to the advisability of trading in commodity futures made by an FCM may be solely incidental to its business[,] while the same advice rendered by a publisher or bank may not.'' [57] Generally, if a publication has a specialized focus upon futures transactions or is largely devoted to futures trading, the commodity trading advice furnished therein will not be considered to be solely incidental to the conduct of the

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[48] Division of Trading and Markets Interpretative Letter No. 93–18, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,694 (February 23, 1993) (publications issued on a monthly or bimonthly basis which contained analyses and advice concerning trading commodity interests, including gold, silver and platinum contracts required registration as a CTA); CFTC Interpretative Letter No. 75–3, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,090 (Office of the General Counsel, Trading and Markets, July 31, 1975) (publisher of newsletter focusing on cash commodity markets and that occasionally prints advice concerning the use of agricultural futures for hedging purposes is a CTA); Division of Trading and Markets Interpretative Letter No. 94–29, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,020 (March 15, 1994) (responding to general questions regarding newsletter publications and CTA registration and concluding that publisher of newsletter offering market advice is not a CTA only if advice is solely incidental to the publisher's business).

[49] Division of Trading and Markets Interpretative Letter No. 93–43, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,734 (May 19, 1993) (requiring CTA registration of IB using a ''900 line'' that provided prerecorded trade recommendations as well as research, market and trade ideas); *see also CFTC* v. *Ehrenberg*, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,640, at 26,429 (E.D. Ill. 1982) (party who advertised services as pork belly trading specialist in commodities magazine and gave commodity trading advice over telephone for a fee was required to register as CTA).

[50] Commission staff have stated that it is not necessary for a person to have a power of attorney in order to be ''directing'' or ''guiding'' accounts. *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 86–15, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,165 (July 22, 1986) (''[i]t should be noted that, although the CTA has no power of attorney over the account, he does have the power to control the client's trades'').

[51] 7 U.S.C. 1a(5)(B). For instance, Commission Rule 4.14 exempts from CTA registration various categories of persons, including certain dealers, processors, brokers or sellers in the cash market for commodities; a registered AP who provides trading advice solely in connection with his employment as an AP; registered CPOs who provide trading advice solely to pools for which they are registered; persons who are exempt from CPO registration who provide trading advice solely to pools for which they are exempt from registration; and certain persons who are registered as investment advisers under the Investment Advisers Act of 1940 or are excluded from the definition of the term ''investment adviser.'' 17 CFR 4.14.

[52] 7 U.S.C. 1a(5)(C). Pursuant to statutory amendments adopted in 1982, the Act also provides that the Commission may, ''by rule or regulation, include within the term [CTA] any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.'' 7 U.S.C. 1a(5)(D).

[53] 7 U.S.C. 1a(5) provides in pertinent part:

(B) Subject to subparagraph (C), the term ''commodity trading advisor'' does not include—

* * * * *

(iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;

* * * * *

(C) INCIDENTAL SERVICES—Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

[54] Division of Trading and Markets Interpretative Letter No. 76–1, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,135 (February 26, 1976) (emphasis added).

[55] *Id.*

[56] *In the Matter of Armstrong*, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,657 (February 8, 1993), *rev'd on other grounds sub nom., Armstrong* v. *Commodity Futures Trading Commission*, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,914 (December 21, 1993) [hereinafter *Armstrong*]; *see also* 52 FR 41975, 41978 (November 2, 1987) (discussing ''solely incidental'' as used in Commission Rule 4.6).

[57] Division of Trading and Markets Interpretative Letter No. 76–1, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,135 (February 26, 1976).

publisher's business.[58] Conversely, if a publication covers a broad range of topics and futures are not its predominant focus, the commodity trading advice provided therein may be ''solely incidental'' to the conduct of the publisher's business. For example, Commission staff have found that ''reprinting'' by an electronic information service of, among other things, specific trading recommendations was solely incidental to its broader business as an electronic information and communications service, a general computer library whose files included a ''broad range of many different types of information.'' [59] However, advice furnished in a financial publication (and related telephone newsline service) that was substantially focused on metals futures, was not solely incidental to that entity's publishing business, but in the words of the Commission, was ''the very point of that business.'' [60] Similarly, where a newsletter devoted a substantial number of issues to analyses of the futures markets and specific trading recommendations, Commission staff found such advice to be ''fundamental,'' rather than solely incidental, to the company's business.[61]

b. Exemption From Registration for Persons Who Furnish Trading Advice to Fifteen or Fewer Persons and Who Do Not Hold Themselves Out as CTAs

Section 4m(1) of the CEA provides an exemption from registration for CTAs who during the preceding twelve months have not furnished trading advice to more than fifteen persons and who do not ''hold [themselves] out generally to the public as a commodity trading advisor.'' [62] A CTA who identifies himself as a CTA or otherwise refers to his advisory services or history on a public electronic forum such as portions of the Internet or a proprietary on-line service may not avail himself of the exemption under Section 4m(1). Such conduct constitutes ''holding out'' to the public as a CTA.[63] This view is consistent with the SEC's views concerning the ineligibility of offerings posted on the Internet for the Regulation D safe harbor from registration. As stated by the SEC, ''[t]he placing of the offering materials on the Internet would not be consistent with the prohibition against general solicitation or advertising in Rule 502(c) of Regulation D.'' [64]

2. Directories and Compilations

In addition to using electronic media to communicate specific commodity trading advice, market participants may engage in activities that implicate registration duties and other CFTC requirements by operating sites on the World Wide Web that compile information about other registrants or futures-related subjects. For example, many locations on the Internet provide central repositories for, directories of, or mechanisms to access information compiled from multiple sources. Persons who compile and reprint information, whether electronically or on paper media, may be subject to the Commission's registration requirements notwithstanding the fact that they did not originally prepare the information disseminated. The terms ''advising'' and ''issues or promulgates'' are not limited to the author of such materials but include the ''dissemination of another's views to third persons.'' [65]

Compilations of information may range from listings of performance data for all publicly offered commodity pools, comparable to newspaper listings of mutual fund returns, to narrowly focused descriptions of the trading strategies and history of a single CTA. In determining whether such compilations constitute either advice as to ''the value of or the advisability of trading'' futures or commodity options or ''analyses or reports'' concerning such trading, as well as the applicability of various statutory exclusions, the Commission considers all of the relevant facts and circumstances. However, to facilitate use of the Internet by commodity professionals, the Commission wishes to clarify the status of certain types of publications of futures-related data.

Publications that compile trading results for commodity pools selected on an objective, neutral basis, *e.g.*, all commodity pools of a certain size or geographic location, could be viewed as providing ''reports or analyses'' concerning futures transactions and thus as within the CTA definition. To the extent that such compilations are presented by a publisher of print or electronic media of ''general and regular dissemination'' in a manner solely incidental to that business, the publisher would qualify for the statutory exclusion from the CTA definition. The publisher of a newspaper of general circulation could therefore publish, in a manner incidental to that business, the performance results for all commodity pools or for all publicly traded commodity pools without registration as a CTA or compliance with the statutory and regulatory requirements applicable thereto.

If a compilation of performance data for publicly offered pools were published by a firm that does not qualify as a publisher of data of general and regular dissemination, *e.g.*, a business devoted exclusively or primarily to operating Internet sites

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[58] *Armstrong;* CFTC Interpretative Letter No 75–4, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,091 (Office of the General Counsel, Trading and Markets, August 11, 1975).

[59] Division of Trading and Markets Interpretative Letter No. 83–3, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,842, at 27,538 (May 25, 1983) (describing the computer information and communications service as ''computer library and information distribution business'').

[60] *Armstrong,* at 40,149.

[61] CFTC Interpretative Letter No. 75–4, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,091, (Office of the General Counsel, Trading and Markets, August 11, 1975). The United States Supreme Court's interpretation of the term ''investment adviser'' in *SEC* v. *Lowe,* 472 U.S. 181 (1985), as used in the Investment Advisers Act of 1940 (''IAA''), does not mandate a different result. In *Lowe,* after reviewing the language and legislative history of the IAA, the Court held that Congress had excluded publishers of generalized securities advice from the definition of investment adviser. Although a ''facial parallel'' exists between the Section 1a(5)(B)(iv) of the CEA and Section 203(c) of the IAA (the exclusion for ''the publisher of a bona fide newspaper, magazine or business of financial publication of general and regular circulation''), unlike the investment adviser definition of the IAA, the CTA definition in Section 1a(5)(C) of the CEA limits the exclusions in Section 1a(5)(B), including the publishers' exclusion of Section 1a(5)(B)(iv), to cases where ''the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession.'' *Armstrong,* at 40,149. Consequently, as the Commission noted in *Armstrong,* ''[g]iven this clear distinction between Congress' exclusionary language in [the IAA and the CEA, the Commission is] not persuaded that the holding in *Lowe* mandates a broad construction of the exclusion from the definition of CTA for certain publishers.'' *Id.*

[62] 7 U.S.C. 6m(1).

[63] *See* examples *infra,* at the conclusion of this section. Likewise, a CPO who advertises a pool on the Internet, *e.g.*, by identifying himself as a CPO of a pool, may not obtain an exemption from registration relief under Commission Rule 4.13(a)(1), inasmuch as such advertising plainly negates one of the required elements of the exemption. Commission Rule 4.13(a)(1) provides an exemption from registration for a CPO if, among other things, ''it does not receive any compensation, directly or indirectly, for operating the pool, except reimbursement for ordinary administrative expenses of operating the pool;'' ''[i]t operates only one pool at a time;'' and ''*[n]either the person nor any other person involved with the pool does any advertising in connection with the pool* * * *.'' 17 CFR 4.13(a)(1) (emphasis added).

[64] 60 FR at 53464. SEC Rule 502(c) prohibits ''any form of general solicitation or general advertising'' and applies to Regulation D offerings pursuant to SEC Rules 505 and 506. 17 CFR 230.502(c). Thus, CPOs who use electronic media in a manner inconsistent with Regulation D may not obtain relief pursuant to Commission Rule 4.8, which is available only with respect to offerings pursuant to SEC Rules 505 and 506. 17 CFR 4.8.

[65] CFTC Interpretative Letter No. 76–24, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,234 (Office of the General Counsel, August 17, 1976).

providing data concerning CTAs and CPOs, the statutory ''publisher'' exclusion would not apply. However, the Commission believes that provided such data are developed using objective, neutral criteria, such as size or geographical location, and presented as such by a bona fide news organization for the purpose of providing current market data, registration as a CTA should not be required.[66] Similarly, an unbiased compilation of all registered CTAs in a given location, clearly described as such and without any express or implied evaluation or suggestions as to the quality of the services such persons provide, may be viewed as equivalent to the telephone ''yellow pages'' directory, and would not implicate the Commission's registration requirements. However, compilations of selected CTAs, or of CTAs who pay a fee for inclusion in a list, may not be neutrally developed compilations and may, in effect, promote the services of selected CTAs. If the provider of this information is compensated for or receives profit from such activities, absent the applicability of a specific exclusion, that person is required to register as a CTA.[67] Moreover, even absent such compensation, the presenter of such data may be soliciting discretionary accounts on behalf of one or more CTAs and thus required to register as an AP of such CTA, or as a CTA.

Compilations presented on electronic media may contain actual descriptive data or simply a collection of hyperlinks. Hyperlinks, a prominent feature of the World Wide Web, enable a user to connect from one location or document to another, a facility without apparent analogy in paper-based media. Hyperlinks consist of an address or phrase which, when activated by a click of the mouse, connects the user to another location on the Internet. The Commission's website, for example, has hyperlinks to a number of World Wide Web sites, including each of the United States contract markets. Internet directories such as Yahoo and Magellan are basically organized collections of hyperlinks. Hyperlinks, although fundamentally a connective mechanism between websites, nonetheless can be used in such a manner as to communicate advice about the value of or advisability of trading in commodity interests, *e.g.*, by labeling, describing, or otherwise introducing the hyperlinked sites. This would be the case, for example, where the operator of a website provides editorial comment about the hyperlinks or provides a list of hyperlinks that represent a pre-selected, defined category of persons or services, whose attributes or qualifications are thereby highlighted.[68] In such a case, the person providing the hyperlinks would be required to register as a CTA.

However, hyperlinks can also be used in a manner that would not require a person to register as a CTA. For example, the Commission believes that merely providing a list of hyperlinks that is the equivalent of a telephone directory or other broad-based source of ''locational'' data, without more, would not make one a CTA because hyperlinks in this context do not necessarily speak ''as to the value of or the advisability of trading in'' commodity interests. Similarly, a website that contains a search or query function that allows visitors to construct searches to obtain data responsive to certain criteria they select would not be considered to be providing trading advice, provided that the website merely provides the ''data library'' and the search vehicle for the viewer's use.[69]

3. Applicability of Antifraud Provisions

Persons using electronic media are subject to the same statutory and regulatory requirements under the CEA, including the statutory and regulatory antifraud prohibitions and related rules pertaining to CTAs and CPOs, as those using other media. These include the antifraud provisions of the CEA, including Section 4*o*,[70] as well as the provisions of Commission Rule 4.41. Rule 4.41 prohibits CPOs, CTAs, or any principals thereof from advertising in a manner which employs any fraudulent device or involves any transaction or course of business which operates as a fraud or deceit upon any pool participant or client or prospective participant or client. Rule 4.41 also bars the presentation of any hypothetical or simulated performance data unless it is ''prominently'' accompanied by a prescribed cautionary statement.[71] Both the statutory antifraud provisions and Rule 4.41 apply to CTAs, CPOs, and their principals, regardless of whether they are exempt from registration under the CEA.[72] Rule 4.41 expressly applies to ''any publication, distribution or broadcast of any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice, including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations.'' [73] The requirements of Rule 4.41 thus apply fully to electronic media such as the Internet.

The Commission also notes that capabilities peculiar to the Internet, such as anonymity and the ability to operate through aliases (*e.g.*, electronic mail addresses, user names), that obscure a person's true identity or business affiliation may be exploited in a manner that operates as a fraud. For example, the use of ''testimonials'' purportedly from third parties but actually created by the CTA or CPO that is the subject of the ''testimonial'' would constitute a fraudulent practice under statutory antifraud provisions and Rule 4.41.

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[66] The Commission stresses, however, that providing even objective market or performance history data in the context of a publication that has the purpose or effect of providing or marketing trading advisory services would require CTA registration. Thus, a newsletter published to communicate the trading advice of a particular CTA or to promote a CTA ''hotline'' service and also including performance data for commodity pools would implicate the CTA definition, notwithstanding that such performance data are objectively developed, because the publication is predominantly one designed to provide trading advice. Thus, whether a particular presentation constitutes trading advice depends upon the facts and circumstances in which the presentation is made and the representations, express or implied, made concerning the content of the presentation.

[67] As noted above, compensation in this context does not require that payment be received for the communication in question. Rather, if the provider of such data profits from presenting it, even indirectly, such as by promoting its own services, the statutory ''compensation or profit'' standard is satisfied.

[68] In this case, the hyperlink communicates the views of the website operator as to the quality of the services addressed or referred to at the hyperlinked site.

[69] This analysis would apply without regard to the criteria selected by the viewer, which could, for example, call for all pools with rates of return above a specified threshold or for presentation of pools in order of rates of return (*e.g.*, high-to-low). However, a website that contained this search feature, but also contained evaluative or mathematical services (*e.g.*, for the calculation of relative rates of return or volatility of returns) would, however, indicate a different result.

[70] 7 U.S.C. 6*o* provides that no CPO, CTA, or any associated persons thereof, may use ''any means or instrumentality of interstate commerce, directly or indirectly—(A) to employ any device, scheme or artifice to defraud any participant or client or prospective client; or (B) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any participant or prospective client or participant.''

[71] 17 CFR 4.41(b); *In re Armstrong*, [Current Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 26,332 (CFTC March 10, 1995), *aff'd sub nom. Armstrong v. CFTC*, No. 95–3161 (3d Cir. January 19, 1996), *cert. denied*, 64 U.S.L.W. 3821 (June 10, 1996). Commission Rule 4.41(b) requires that hypothetical or simulated performance data be accompanied either by the statement specified in Rule 4.41(b)(1) or a comparable statement promulgated by a registered futures association. The NFA's cautionary statement can be found in NFA Rule 2–29.

[72] *See* 7 U.S.C. 6*o*; 17 CFR 4.41(c)(2).

[73] 17 CFR 4.41(c)(1).

The following examples are illustrative of the requirements discussed above.

(1) *(General Internet Directory Not a CTA)* Company XYZ operates a website that provides a directory of hyperlinks to the World Wide Web. XYZ has broad listings under such topics as Arts, Business and Economy, Computer and Internet, Education, Entertainment, Government, Health, News, Recreation and Sports, Reference, Regional, Science, Social Science and Society and Culture. Within the Business and Economy section is a subsection covering Futures and Options. Among the hyperlinks in the Futures and Options sections are those of a number of CTAs. XYZ does not charge CTAs for listings in its directory; XYZ's revenues are derived solely from advertising on its homepage. XYZ does not exercise any discretion as to the inclusion of any CTA on its directory, and any CTA requesting inclusion will be included; these facts are prominently disclosed. XYZ provides no information about the content of the CTA sites to which hyperlinks are provided. XYZ qualifies for the exclusion from the definition of a CTA for a producer or publisher of information of general and regular dissemination since its homepage provides information across all subject matters and the information provided by such links is solely incidental to its business, which is to provide an index of the World Wide Web.

(2) *(Recommending or Evaluating CTAs)* Company XYZ operates a website that contains a list of hyperlinks to CTAs described as the ''Ten Best CTAs for 1996.'' Each of the ten CTAs featured on XYZ's homepage is required to pay XYZ a fixed fee. In this scenario, XYZ is a CTA and is required to register as such. By making evaluative representations about the featured CTAs, XYZ is providing advice about the value of or advisability of trading in commodity interests. Since XYZ receives a fee from each of the ten featured CTAs, the compensation element of the CTA definition is satisfied. Absent the availability of an exclusion from the CTA definition, XYZ must register as a CTA.

(3) In the same factual scenario as in Example (2), XYZ does not receive a fee from each of the listed CTAs, but instead receives revenues from various advertisers on its website. In this case too, XYZ is required to register as a CTA. The profit or compensation element of the CTA definition includes fees received from advertisers and need not flow directly from the person or persons advised or from the featured CTAs.

(4) *(Disclaimers)* Same facts as Example (2) above, except that XYZ also provides a disclaimer on its website that states ''All materials and information provided with respect to the CTAs contained herein are not intended as commodity trading advice and we make no specific recommendations with respect to which CTA best suits your investment needs. The information is intended to enhance your futures investment decisions, not make them for you.'' Again, XYZ would be required to register as a CTA. XYZ has provided trading advice and cannot by disclaimer alter the reasonably anticipatable effects of the information provided or the consequent registration requirements under the Act.

(5) *(Providing Leads)* WXY is in the business of generating leads and mailing lists for third party vendors who are engaged in various businesses. For a monthly fee, WXY's lead generating services are open to all businesses who wish to obtain mailing lists to solicit customers. WXY's website on the World Wide Web allows site visitors to ''sign up'' to receive information on products and services that are of particular interest to the site visitors by allowing the site visitors to click on various listed categories (*e.g.,* ''Click here if you would like to receive information on computers; Click here if you would like to receive information on insurance products''). One of the categories allows site visitors to click on a particular location if they are interested in receiving commodity trading and investment information. Site visitors are asked to register in a guest book which requests their name, electronic mail address, street address, income and other information.

WXY forwards to various CTAs the names of and other information concerning the persons who requested information on commodity trading and investments. By engaging in such activities, WXY would be operating as a ''finder'' since its purpose would be to seek clients on behalf of Commission registrants. WXY must therefore register as an AP of the CTAs to whom it furnishes customer names, or as a CTA.

(6) *(Electronic Mail to Specific Address May Not Defeat 4m(1) Exemption)* John Doe, a school teacher who studies the stock and futures markets for his own financial benefit and trades futures contracts for his own account, discusses his trades with his college roommate and friend, George, and two other friends whom he has known for twenty years. The three friends ask John to furnish commodity trading advice to them and John agrees to act as their CTA. John is not registered with the Commission in any capacity, has not previously furnished commodity trading advice to any other persons, and has not held himself out generally to the public as a CTA. John and his three friends all have computers and electronic mail addresses and all four persons use electronic mail on a regular basis to communicate with one another. John's three friends agree that John may provide them with commodity trading advice and other information relating to their commodity accounts through electronic mail to their electronic mail addresses to which only they have access. John's use of an individual electronic mail address for purposes of communicating commodity-related information to his three friends would not in this case defeat a potential Section 4m(1) exemption from CTA registration because the electronic mail communication in this instance is personal and direct and is limited to electronic correspondence with those three individuals.

(7) *(Placing Performance Data on a Generally Accessible Internet Site Would Be Inconsistent With 4m(1) Exemption)* Same facts as above except John also operates a website and he posts the performance data of his friends' trading accounts on his website. By placing the performance data on a public electronic forum that can be readily accessed by others, John would be holding himself out as a CTA and thus would not satisfy one of the criteria of the Section 4m(1) exemption from CTA registration.

(8) *(Providing Telephone Directory for CTAs Does Not Require Registration as CTA)* XYZ operates a website that contains a directory which it represents to be a list of each registered CTA, containing the name, address, and telephone number for each CTA. Although XYZ may receive compensation from advertisers on its website, XYZ is not required to register as a CTA. In this case, the limited information provided on each CTA does not constitute commodity trading advice. Further, by providing a complete directory of all registered CTAs, and representing it as such, XYZ is making clear that it is not promoting or recommending any particular CTA but, rather, is providing a directory which interested persons can use to contact CTAs of their choice. Further, as XYZ provides an equivalent level of data for each registered CTA, it does not implicitly recommend or favor one CTA over another.

(9) *(Providing Biographical and Descriptive Information on Selected CTAs in a Manner That Implies Evaluation or Recommendation Requires Registration as CTA)* XYZ operates a website that contains a directory listing each registered CTA, containing the name, address, and telephone number for each CTA. Additionally, for certain CTAs, XYZ provides information concerning the types of trading programs they utilize and certain performance data. XYZ does not charge visitors to its website for access to this information but is compensated by CTAs for displaying advertisements at the top of certain web pages. Under these circumstances, XYZ must register as a CTA. Presentation of a compilation of biographical and descriptive data on certain CTAs has the effect, whether intended or otherwise, of promoting, recommending, or marketing the services provided by such CTAs. This conclusion is not affected by the fact that XYZ provides very basic biographical data on all CTAs, since XYZ has plainly distinguished among CTAs and highlighted certain CTAs for specialized attention. Moreover, XYZ is compensated for providing this information. As a result, absent the applicability of a specific exclusion, XYZ is required to register as a CTA.

(10) *(Compensation or Profit Includes Offer of Free Services for a Limited Time)* RST has created a new daily ''e-zine'' on the World Wide Web that is principally devoted to commodity trading advice provided by RST and promotion of RST's advisory services. To promote this new e-zine, RST is offering free trial subscriptions for a limited time, *e.g.,* ninety days. After this initial trial period, users must pay RST's rate of $20 per week. RST is required to register as a CTA. Even though RST is offering free subscriptions to all persons during its start-up period, it is nonetheless operating the ''e-zine'' and providing commodity trading advice for compensation or profit. As discussed above, the ''compensation or profit'' element of the

CTA definition includes the attraction of new customers.

(11) *(Gratuitous Leads, Discussions in Chat Rooms)* Sally Smith, an accountant, frequently interacts with other persons via a financial investment ''chat room'' on a major on-line service. During the course of these interactions, she advises other persons in the chat room concerning a recent investment she made in a commodity pool. She informs others in the chat room that she is exceptionally pleased with the returns on her investment and that she believes that the CPO is an excellent investment manager. In support of her remarks, she also provides the pool's performance data. Neither the CPO, its principals or anyone involved in the pool's operation is affiliated with Sally Smith or her employer. She does not receive any compensation or other consideration for her participation in the chat room, from the CPO, others in the chat room, the site provider, or otherwise, whether directly or indirectly. Sally Smith would not be required to register with the Commission as her chat room activity and the information that she is providing is strictly gratuitous.

(12) *(Compensated Leads, Discussions in Chat Rooms)* If in the same factual scenario as above in Example (11), Sally Smith is compensated by the CPO for soliciting members from the chat room, then Sally Smith would be required to register as an AP of the CPO.

(13) *(Use of Aliases, if Undisclosed, May Be Fraudulent)* In the same factual scenario as Example (11), Dave Doe, the CPO for the ''Futures Pool,'' is also in the chat room. Unlike Sally Smith, Dave Doe does not use his real name when communicating with others in chat rooms; he uses the alias ''HonestMan.'' Under this alias, Dave Doe tells others in the chat room that he has heard that the ''Futures Pool'' is an ideal pool for first time investors because it offers excellent performance and low fees. In response to an inquiry from someone in the chat room, ''HonestMan'' also states that ''he has never heard of anyone losing money who invested in the Futures Pool,'' which he knows to be untrue. Dave Doe is in violation of the antifraud provisions of Section 4*o* of the CEA and Commission Rule 4.41. Additionally, Dave Doe has violated Commission Rule 4.21(a) because he has solicited prospective pool participants for the ''Futures Pool'' but has not delivered its Disclosure Document.

(14) *(Hypothetical Performance Must Be Accompanied by Cautionary Statement of Rule 4.41(b))* LMN is a registered CTA who operates a website. LMN's website contains a table of contents. One of the items listed is a hyperlink to ''Hypothetical Performance.'' On the Hypothetical Performance section of its website, which can be accessed only after a person has received a copy of LMN's Disclosure Document, LMN demonstrates that based upon hypothetical performance results, its trading program yields an annualized return of in excess of 60 percent. LMN does not provide any statements about the significance of hypothetical performance. LMN only states, in bold faced type, that ''Past Performance is No Guarantee of Futures Results'' and ''Futures Trading Entails Substantial Risk and May Not be for Everyone.'' LMN is in violation of Commission Rule 4.41(b), which requires that hypothetical or simulated performance be accompanied by the legend set forth in Rule 4.41(b)(i) or prescribed by the NFA pursuant to 4.41(b)(ii). In order to comply with Rule 4.41(b), LMN is required to post either the CFTC's or NFA's legend regarding hypothetical performance on the same webpage as, and presented so as to ''prominently'' accompany, the presentation of the hypothetical performance. LMN also may be in violation of the antifraud provisions of Section 4*o* the CEA.

(15) *(Editing Unfavorable Comments From Guestbook May Violate Rule 4.41)* ABC is a CTA who maintains as part of its website an interactive guestbook on which individuals post comments or questions concerning ABC's trading system. ABC, which operates the website, has the ability to edit the comments received. ABC's website description of the guestbook implies that any person can post comments on the guestbook, both favorable or unfavorable. If ABC then edits any unfavorable comments he receives without indicating this fact to visitors, ABC may violate Rule 4.41. ABC also may be in violation of the antifraud provisions of Section 4*o* of the CEA.

B. Solicitation Activity

1. Registration

Other types of communication by means of electronic media may constitute solicitation activity, which gives rise to both registration and disclosure duties. Section 4k(3) of the Act requires registration as an AP of a CTA of any person associated with a CTA ''as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged.'' [74] Similarly, Section 4k(2) requires the registration as APs of persons associated with a commodity pool operator ''as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.'' [75]

''Solicitation'' activity has been construed by Commission staff to include conduct that ''influences even indirectly the investment of customer funds.'' [76] For example, Commission staff have found that initiating telephone contacts to identify persons interested in receiving information about futures trading [77] and introduction of potential investors to a CPO for compensation,[78] may constitute solicitation activity requiring registration. The breadth of the media encompassed by the definition of ''solicitation'' is comparable to that of the underlying CTA and CPO definitions, which are written broadly to reach all modes of communication and conduct. For instance, the CPO definition uses several alternative formulations of the transfer of consideration to the CPO, *i.e.*, ''solicit,'' ''accept'' and ''receive'' funds, securities, or property for the purpose of trading in futures contracts. As stated by CFTC staff, these formulations indicate that Congress ''intended to achieve the broadest possible effect—namely, to cover all of the means by which a person can obtain control over pool participants funds.'' [79] Similarly, as

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[74] 7 U.S.C. 6k(3).

[75] 7 U.S.C. 6k(2).

[76] Division of Trading and Markets Interpretative Letter No. 90–11, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,872 (June 12, 1990).

In Congressional discussions occurring prior to the establishment of the Commission as an independent regulatory authority, the Subcommittee on Special Business Problems of the Permanent Committee on Small Business noted that:

> In order to adequately protect the investing public, the subcommittee feels that registration requirements and fitness checks should be imposed on commodity solicitors, advisors, and all other individuals *who are involved either directly or indirectly in influencing or advising the investment of customers' funds in commodities.* This would include any individuals or organizations identified as influencing or actually investing funds in the commodities markets.

Subcommittee on Special Business Problems of the House Permanent Select Committee on Small Business, H.R. Rep. No. 93–963, 93d Cong., 2d Sess. at 36–37 (1974) (emphasis added).

[77] *See* Division of Trading and Markets Interpretative Letter No. 90–11, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,872 (June 12, 1990); Division of Trading and Markets Interpretative Letter 90–8, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,831 (May 7, 1990). The Commission's Office of the General Counsel (''OGC'') has stated that employees of a registered FCM are required to register as APs if they initiate customer contact by telephoning prospective customers even if their responsibilities are limited to determining customer interest in speaking with a registered representative or receiving promotional literature and referring interested customers to a registered AP. OGC concluded that the initiation of telephone contact constituted a solicitation requiring registration as an AP. CFTC Interpretative Letter No. 77–8, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,430 (Office of the General Counsel, May 16, 1977).

[78] *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 90–4, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,588 (January 31, 1990)(a person who introduces a potential investor to a CPO and who is compensated as a ''finder'' would be soliciting on behalf of the CPO and thus required to register as an AP thereof).

[79] CFTC Interpretative Letter No. 75–17, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,112 (Office of the General Counsel, Trading and Markets, November 4, 1975).

noted above, the CTA definition refers to multiple types of media, including electronic media, as vehicles for providing trading advice.

The Internet provides a medium for a potentially broad range of solicitation and promotional activity, as well as for conveying trading advice. Plainly, CTAs and CPOs who use electronic media to inform members of the public of their futures activities are engaged in the solicitation of prospective customers. Thus, most websites of CTAs and CPOs on the World Wide Web are forms of solicitation. This is true even if the website is limited to biographical or descriptive information, for such data announces the CTA's or CPO's business to prospective clientele and can reasonably be assumed to elicit the interest of potential customers.

Similarly, a website that is not operated by a CTA or CPO, but which identifies potential customers for one or more CTAs or CPOs or evokes potential customer interest in such CTAs or CPOs generally would constitute a solicitation. For example, a website marketing the trading programs of selected CTAs would constitute a solicitation on behalf of such CTAs. Likewise, the operator of a website that accepts and forwards to a CTA or CPO the names and addresses of potential customers, and receives compensation for such referrals from the CTA or CPO, would be soliciting on behalf of the CTA or CPO. Consequently, the operators of such sites may be required to register as APs of the CTA on whose behalf the solicitation was undertaken,[80] and as an AP of the CPO on whose behalf the solicitation occurs.

2. Required Delivery of Disclosure Document

Commission regulations require that at or before the time a CTA solicits or enters into an agreement to direct or guide a customer's account,[81] or a CPO directly or indirectly solic its, accepts or receives funds from a pool participant,[82] such CTA or CPO must ''deliver or cause to be delivered'' to the prospective client or pool participant a Disclosure Document that conforms to the applicable rules.[83] The requirement to deliver a Disclosure Document attaches irrespective of the medium through which solicitation occurs. Consequently, a CTA or CPO soliciting prospective customers or pool participants by means of electronic media must ''delive[r] or caus[e] to be delivered'' a required Disclosure Document prior to such solicitation by prominently providing a copy of that document at, or through hyperlinks with, the same site at which the solicitation occurs or by delivering a hardcopy Disclosure Document to a prospective customer prior to providing access to any electronic solicitation.[84] Application of the delivery requirement in the context of electronic media is discussed below in the following section.

With respect to CTAs, the requirement to deliver a Disclosure Document applies only where the CTA solicits a prospective client to ''direct'' or ''guide'' his account.[85] The term ''direct'' as used in Rule 4.31 refers ''to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.'' [86] Although the term ''guide'' is not defined in Part 4, the Commission referred to the term ''guide'' in implementing regulations requiring the delivery of a Disclosure Document by CTAs.[87] In that release, the Commission stated that Rule 4.31 ''established disclosure requirements for CTAs that seek to control clients' accounts (*e.g.*, through managed accounts) or influence clients' commodity interest trading by means of a systematic advisory program (*e.g.*, through guided accounts).'' [88] Thus, CTAs who solicit actual or prospective clients through electronic media for purposes of directing or guiding customer accounts must provide each such customer with a Disclosure Document at or before the time of solicitation. CTAs who do not direct or guide customer accounts, *e.g.*, those who provide trading advice in a newsletter, would not be required to provide prospective clients with a Disclosure Document.

The following examples are illustrative of the requirements discussed above.

(16) *(Posting Promotional Materials is a Solicitation Requiring Disclosure Document Delivery)* XYZ is a CTA who operates a site on the World Wide Web. On its website, XYZ provides a description of its principals and a brief summary of its trading strategy and the types of accounts it manages. XYZ also provides its phone number and electronic mail address for interested persons to contact it. XYZ does not provide a copy of its Disclosure Document. In this case, XYZ is violating Rule 4.31(a) because it is soliciting prospective clients without delivering a Disclosure Document.[89]

(17) *(Posting Descriptive Performance Information or Performance Data is a Solicitation Requiring Disclosure Document Delivery).* JKL, a registered CPO, operates a site on the World Wide Web. The website provides biographical information about the principals of the CPO and investment opportunities that the CPO offers, including various commodity pools with differing risk parameters and performance histories. JKL's website also posts summary performance information for the various commodity pools. The posting of biographical and investment information operates as a solicitation, as does posting of summary performance data. Thus, JKL would be required to provide the Disclosure Documents for its various pools to the website visitors at or before the time it engages in the solicitation. JKL must provide its Disclosure Documents either directly on its website or by means of prominently highlighted hyperlinks from its website and ensure that visitors receive the Disclosure Documents at the same time as or before their viewing of other website materials, *i.e.*, the time at which the solicitation occurs. The

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[80] If such persons are already registered as CTAs or CPOs, registration as an AP of that registration category is not required. Further, the definition of an AP of a CTA includes only persons who are involved in ''(i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged.'' 7 U.S.C. 6k(3). Thus, the appropriate registration category for persons who solicit on behalf of CTAs who do not manage accounts is that of CTA, as they are providing trading advice by advising concerning or marketing the services of certain CTAs.

[81] Rule 4.31(a) provides:

No commodity trading advisor registered or required to be registered under the Act may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a Disclosure Document for the trading program pursuant to which the trading advisor seeks to direct the client's account or to guide the client's trading, containing the information set forth in §§ 4.34 and 4.35.

17 CFR 4.31(a).

[82] Rule 4.21(a) provides:

No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in § 4.24; * * *.

17 CFR 4.21(a).

[83] The Disclosure Document required to be furnished by a CTA must contain the information set forth in Rules 4.34 and 4.35. The Disclosure Document required to be furnished by a CPO must contain the information set forth in Rules 4.24 and 4.25.

[84] As discussed below, CTAs and CPOs may provide an outline or table of contents of the website prior to the reader receiving a Disclosure Document.

[85] *See* discussion of managing customer accounts, *supra* note 50.

[86] 17 CFR 4.10(f).

[87] 44 FR 1918, 1923 (January 8, 1979).

[88] *Id.*

[89] Guidance regarding the manner by which CTAs and CPOs may deliver Disclosure Documents by means of a website is provided in the following section.

reader must review the Disclosure Document before being permitted access to the biographical and other information. JKL also must inform visitors that, in addition to reviewing the various Disclosure Documents on-line, they may obtain printed copies of the Disclosure Documents upon request.

(18) Same facts as above, except JKL's website does not provide a copy of JKL's Disclosure Documents or hyperlink to them. Rather, following the performance data, the website provides a telephone number that persons can call to request the delivery of specific commodity pool Disclosure Documents. The placement of performance information on a website followed by a telephone number that visitors can call to request a Disclosure Document would be insufficient to satisfy the requirements of Rule 4.21(a) as delivery of the Disclosure Document would not accompany or precede the solicitation.

(19) *(Delivering a Disclosure Document Necessary for Solicitation of Prospective Pool Participants)* ABC is a registered CPO who operates a website on the World Wide Web. On its website, ABC provides a brief description of the various commodity pools it offers. ABC also provides copies of each of its Disclosure Documents, in an acceptable format, which visitors to its website must access from a menu of options at the beginning of its homepage, before proceeding to any further information concerning one of the offered commodity pools. By providing access to each of its Disclosure Documents and assuring that the prospective participant accessed the relevant Document before receiving any information other than a brief description of the pool, ABC has complied with Rule 4.21(a), which requires that at or before the time a CPO solicits a prospective participant, the CPO deliver to the prospective client a Disclosure Document for such commodity pool.

(20) *(Term Sheet Cannot Replace Disclosure Document)* In the same example as above, instead of providing the Disclosure Documents for each of the pools, ABC provides a notice of intended offering and statement of the terms of the intended offering (''term sheet''). ABC's pools do not accept investors who are not ''accredited investors,'' as defined in 17 CFR 230.501(a). Nevertheless, ABC has not satisfied the criteria of Rule 4.21(a). Since ABC's term sheet can be accessed by persons who are not ''accredited investors,'' ABC is soliciting such persons without having provided a copy of its Disclosure Document.

(21) *(Distribution of Promotional Materials Through Personal Electronic Mail is a Solicitation Requiring Disclosure Document Delivery)* ABC is a CTA who operates a site on the World Wide Web. Visitors to ABC's website, who may not have reviewed ABC's Disclosure Document, are invited to give their electronic mail address so that ABC can put them on its electronic mailing list. Periodically, ABC sends to those persons who have provided electronic mail addresses information concerning ABC's monthly performance results. Use of electronic mail in this manner operates as a form of solicitation. Accordingly, ABC may not send performance data or comparable information to prospective clients by means of electronic mail unless it has previously delivered its Disclosure Document to them. Failure to deliver a Disclosure Document to persons whom it solicits by electronic mail would constitute a violation of Rule 4.31.

ABC may periodically send electronic mail to prospective clients after they have received a copy of its Disclosure Document for as long as that Disclosure Document remains valid. If, however, ABC revises its Disclosure Document to reflect changes in its trading program, or the Document becomes out of date, ABC would be required to cease sending electronic mail to prospective clients until after it has delivered to each such client a copy of its new Disclosure Document.

III. Electronic Delivery of Disclosure Documents

The Commission is cognizant of the potential benefits of electronic communication of information among participants in the futures markets generally and in the managed futures marketplace in particular. Electronic technology may enhance information access by market users and facilitate communication by brokers and other commodity professionals. A number of CTAs and CPOs have expressed interest in using electronic media to provide existing and prospective clients or pool participants with Disclosure Documents and other required disclosures. A central goal of this release is to provide guidance as to the circumstances in which electronic media may be used for these purposes.

The Commission believes that, as a general matter, the requirements that CTAs and CPOs deliver Disclosure Documents to prospective clients and pool participants, respectively, may be satisfied by the use of electronic media, provided appropriate measures are taken to assure that the purposes of the delivery requirement are achieved. By this release, the Commission is giving notice that CTAs and CPOs may use electronic media in accordance with the criteria discussed below [90] to satisfy the Disclosure Document delivery requirement as to consenting prospective customers and pool participants and to provide certain related documents, as specified below. The Commission invites comment on these criteria and any additional criteria that commenters believe to be relevant in this context.

A. Criteria

Consistency. The Commission believes that it is important to maintain consistency in the application of regulatory requirements as between electronic and non-electronic media. Information conveyed electronically must achieve the same objectives as paper-based communications. Further, the rules applicable to such communications should not favor one form of communication over another; to the extent possible, they should be ''form neutral.'' The medium for providing required information should be selected based upon the relative merits of the two methods of communication, not the application of the Commission's regulations.

Choice/Consent. Although the Commission supports the use of electronic media to enhance the speed and efficiency of communications by futures professionals with market participants, it recognizes that even among those persons who have access to electronic delivery, many may prefer to receive information in paper form. Accordingly, a CTA or CPO may use electronic delivery in lieu of traditional paper-based delivery of a Disclosure Document only where the intended recipient provides informed consent to receipt of the document by means of electronic delivery. Similarly, informed consent also must be obtained from a pool participant if a CPO plans to use electronic media to deliver monthly or quarterly account statements required under Rule 4.22.[91]

CTAs and CPOs who intend to make electronic delivery must inform potential recipients concerning: (1) the requirement that prospective managed account customers and commodity pool participants receive a Disclosure Document for the relevant trading program or commodity pool at or prior to the time of solicitation and such other documents as the CTA or CPO seeks consent to deliver by electronic media; (2) their right to elect to receive the Disclosure Document (and other

[90] Some of these criteria have been noted by the SEC in its releases on electronic media. *See* 61 FR 24644; 60 FR 53458.

[91] The requirement of a manual signature on such statements pursuant to Rule 4.22(h) may be satisfied if the CPO keeps a manually signed copy at its place of business in accordance with Rule 4.23. *See* Division of Trading and Markets Interpretative Letter No. 93–61, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,780 (June 24, 1993) (CPO may use facsimile signature pursuant to Rule 4.22(h) provided CPO retains the Account Statement from which facsimile is made in accordance with Rule 4.23); *cf.* Advisory No. 28–96 [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996) (use of personal identification number may be deemed equivalent of manual signature for purposes of attestation under Commission Rule 1.10(d)(4)), *supra* note 25. Commission regulations do not currently permit CPOs to deliver Annual Reports by electronic means. However, the Commission invites comment from CPOs, accounting professionals, and other interested persons regarding the advisability of amending Rule 1.16 to allow for certification of Annual Reports by independent public accountants by means of electronic media.

specified documents to the extent consent is sought for electronic delivery of other communications) in hardcopy form or by electronic means; (3) the specific medium and method by which electronic delivery will be made (for example, whether delivery will be limited to users of a particular proprietary on-line system, will be made available on the World Wide Web, or will be made as an attachment to electronic mail); (4) the potential costs associated with receiving or accessing electronically delivered documents, such as costs relating to on-line access charges, the requirement to maintain an electronic mail account, or the need to possess certain proprietary software packages (such as a particular word processing program or operating system); (5) the types of documents that will be delivered electronically, *i.e.*, documents in addition to the Disclosure Document, such as supplements to Disclosure Documents and pool account statements, and the form in which they will be delivered; and (6) the prospective customers' right to revoke their consent to electronic delivery at any time and the period of time during which the consent to electronic delivery will be effective, absent revocation. Notification concerning at least each of these factors is necessary to the receipt of informed consent from the intended recipient. As informed consent must be revocable at any time, if a person initially agrees to receive certain required disclosures electronically, he must be permitted to revoke such consent at any time, and the CTA or CPO must then provide him with disclosures in hardcopy form. Potential recipients of electronic communication may provide their informed consent either in writing or by electronic means.

Delivery and Access. As noted previously, Commission rules require that at or before the time at which a CTA or CPO solicits a prospective client or pool participant, respectively, he must deliver, or cause to be delivered, the applicable Disclosure Document.[92] When a person delivers a document by means of postal mail or provides the document personally, the recipient simultaneously has notice of the delivery of the document and receives the actual document. By contrast, when a person distributes a document by means of electronic media, the document (a) will be available only to persons who possess the necessary computer equipment and software to receive it, (b) must be brought to the intended recipient's attention and (c) will be accessible only to recipients who take certain actions in order to access and review the document.

The prospective client or pool participant must be provided the relevant Disclosure Document prior to or at the time of solicitation. In general, the breadth of the term ''solicitation,'' combined with the requirement to deliver a Disclosure Document at the time of or prior to solicitation, significantly restricts the information that CTAs or CPOs may present about their services prior to delivering a Disclosure Document. As discussed above, even preliminary contacts or communication of basic information may constitute a solicitation. Indeed, a website operated by a CTA who simply identifies himself as such may operate as a solicitation, even without other content. Consequently, if for example, a CTA's Disclosure Document is presented at the end of the CTA's website, or made available only at the option of the reader, delivery of the Disclosure Document may occur only after the solicitation has occurred, if at all. In such instances, the CTA operating the website would be in violation of Commission rules with respect to delivery of Disclosure Documents prior to or at the time of solicitation. To facilitate the operation of websites by CTAs and CPOs in a manner consistent with Commission rules and without unduly burdening the use of this medium, the Commission provides the following guidance.

First, a website must provide access to the Disclosure Document prior to any content other than *de minimis* introductory material. For example, a visitor may be given a general description of the contents of a website before reviewing the Disclosure Document. This may be accomplished through presentation of an outline or table of contents for the website, with the Disclosure Document listed as the first item in the outline or table of contents. The outline or table of contents may include topic headings that are neutrally stated, such as ''Disclosure Document'', ''Background of CTAs'' and ''How to Contact Us.'' Icons or images also may accompany such topic headings, but both the topic headings and any icons or images must be presented neutrally.

The website must be constructed so that the reader may not proceed to subsequent sections of the site until he has first accessed and proceeded through the Disclosure Document. Thus, if an outline or table of contents is used, the only active hyperlink should be to the Disclosure Document. For example, if a visitor attempts to view another portion of the website, the website should inform the visitor that he must first access the Disclosure Document before he will be allowed elsewhere in the website. Only after a visitor has been delivered a Disclosure Document and affirmed that he has reviewed it may hyperlinks to other sections of the website be activated.

Delivery of a Disclosure Document for purposes of solicitation, *i.e.*, Commission Rules 4.21(a) and 4.31(a), will be complete when the recipient scrolls down to the end of the Disclosure Document and confirms that he has received the Document. Many website operators currently employ similar designs, for example, in requiring persons to agree to a set of terms and conditions before proceeding in a website or to acknowledge that they are of a certain age. This confirmation of delivery is for the purpose of complying with the requirement that the Disclosure Document be provided at or before the time of solicitation. This confirmation, which is required in the context of electronic presentations of solicitation material, is distinct from the receipt of acknowledgment that is required before a prospective pool participant or client may open an account pursuant to Rules 4.21(b) and 4.31(b). The requirements for obtaining a receipt of acknowledgment under Rules 4.21(b) and 4.31(b) are discussed below in the acknowledgment section.

Websites that contain multiple trading programs or commodity pools may contain a separate Disclosure Document for each such program or pool. CTAs or CPOs, however, are not required to deliver a Disclosure Document for every trading program or commodity pool before allowing a potential client or pool participant access to all portions of a website. Rather, a CTA or CPO may

[92] As noted by example above, a CPO may not satisfy the requirements of Rule 4.21(a) by electronically posting a ''term sheet.'' Rule 4.21(a) provides that ''where the prospective participant is an accredited investor, as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering may be provided prior to delivery of a Disclosure Document * * *.'' In posting a term sheet on a public electronic forum, a CPO is soliciting all persons who are able to access such term sheet, many of whom may not be ''accredited investors.'' Consequently, unless a CPO restricts access to its term sheet to ''accredited investors'' only, a CPO must also provide a copy of its Disclosure Document in accordance with the criteria set forth herein in order to comply with the requirements of Rule 4.21(a). In any event, to the extent that the CPO intends the offering to be an exempt private offering under SEC Regulation D, such CPO must comply with the solicitation and advertising restrictions in SEC Rule 502(c). *See* 60 FR at 53463–64 (in which example (20) of SEC's release indicates that placing offering materials on Internet would not be consistent with prohibition against general solicitation or advertising in Rule 502(c) of Regulation D).

allow a prospective investor to select a particular trading program or commodity pool, and following delivery of the Disclosure Document for such program or pool, the prospective investor may access general information or material specific to such program or pool. CTAs or CPOs who operate several trading programs or commodity pools must ensure that there is no solicitation on behalf of programs or pools for which a Disclosure Document has not been delivered and reviewed. For example, a CPO who delivers a prospective pool participant a Disclosure Document for ''Pool A'' must not allow such prospective pool participant to access materials on his website pertaining to ''Pool B.''

Commission rules require that a CPO or CTA deliver a particular Disclosure Document only once; consequently, with respect to ''repeat visitors,'' separate delivery is not required for subsequent solicitations for the same pool or trading program so long as the Disclosure Document has not changed or expired. Thus, CTAs and CPOs may design websites systems that allow ''repeat visitors'' who have already reviewed a Disclosure Document to bypass the requirement to receive that Disclosure Document again. For example, a prospective investor, after receiving the required Disclosure Document(s), may be given a password or PIN to enter at the beginning of a CTA's or CPO's homepage to allow him to bypass the consent and Disclosure Document delivery portions of the website for the trading program(s) or pool(s) for which he has already recieved a Disclosure Document. However, in order to comply with Commission Rules 4.26 and 4.36, the password or PIN must expire once the CPO or CTA amends his Disclosure Document(s) or the effective period of the Disclosure Documents expires.

Documents can be delivered electronically in a variety of ways; some of these methods require very little effort on the part of the recipient, whereas others demand substantial computer expertise or lengthy download times.[93] The Commission believes that delivery should be made in a manner that is not unduly burdensome to the recipient of the document. In cases where information is unduly burdensome to access, the Commission will deem such delivery to be ineffective unless the party making delivery can demonstrate that the recipient actually accessed the document. In the case of a Disclosure Document, an acknowledgment of receipt, provided that it is fully informed and voluntary, should suffice for this purpose.

However, electronic media present special concerns with respect to access because an acknowledgment of receipt in this context does not evidence the ability to access the document over time. The Commission believes that the recipient of electronically delivered documents should be able to have repeated access to the document following delivery. Such accessibility should be comparable to that of a paper document that can be read and re-read over time.[94] The ability to re-read a document, such as a Disclosure Document, is often necessary to a careful evaluation of the risks and benefits of a particular investment or a meaningful comparison of Disclosure Documents of different pools or trading programs. Accordingly, in order for the electronic delivery of Disclosure Documents to satisfy the Commission's requirements, the recipient must be able to access the document upon receipt and continually thereafter. If the method of electronic delivery of a Disclosure Document requires the reader to download a file to a permanent storage device (such as a hard drive) and to confirm that he has done so, the accessibility concern may be addressed. However, in other circumstances, such as where a Disclosure Document is not downloaded, the Commission believes that accessibility of the Disclosure Document to the prospective (or actual) CTA client or commodity pool participant for a period of nine months after the solicitation occurs would be sufficient but requests comment on this issue.

Acknowledgments. The requirement to deliver a Disclosure Document is only part of a CTA's or CPO's obligation. Before a CTA may enter into an agreement with a prospective client to direct or guide his account, or before a CPO may accept or receive funds, securities or property from a prospective pool participant, such CTA or CPO must receive a signed and dated acknowledgment from the prospective client or pool participant confirming receipt of the Disclosure Document for the trading program or pool, respectively.[95] A CPO or CTA may not rely solely on the fact that a prospective investor may have visited the Disclosure Document while reviewing a CPO's or CTA's homepage or consented to receive a Disclosure Document by electronic media.[96] The signed and dated acknowledgment is a certification by the prospective investor that he has received the required Disclosure Document and is among the items required to be kept by CPOs and CTAs under the Part 4 recordkeeping requirements.[97]

The Commission supports the use of electronic media to obtain customer acknowledgments but believes that measures must be taken to assure an adequate level of verification of the authenticity of such acknowledgments. Requiring the reader to send an electronic mail message or click on an ''acknowledgment button'' on a website would not, without more, be sufficient for this purpose. As discussed above, the Division of Trading and Markets has permitted the use of a personal identification number (''PIN'') to represent a manual signature for the transmission of certain financial reports in which a manual signature normally is required.[98] The use of a PIN serves two important objectives. First, it enables the recipient, to the extent practicable, to verify the identity of the person sending the electronic communication. If an electronic transmission is

[93] Certain methods of delivery require relatively little sophistication on the part of the user. For instance, the content of a site on the World Wide Web can be accessed simply by entering that address into a ''web browser'' program. Similarly, the contents of an electronic mail message are viewed simply by reading the electronic mail screen or by viewing an attachment to electronic mail that is formatted for a widely available word processing program. On the other hand, where a party must download a file and also a program to decode that file (*e.g.,* ''unzip'' programs), it is less certain that such party will ultimately be able to access the document. In raising this concern, the Commission does not necessarily intend to preclude any particular types of electronic transfer but, instead, is seeking to ensure that the recipient is able to access the information communicated without substantial burden.

[94] For example, a ''one-time'' or ''live'' broadcast over the Internet generally does not allow a recipient repeated access to the information. In the absence of adequate evidence that the intended recipient actually recorded or stored the information, this method of presentation would not satisfy the access concerns identified above.

[95] *See* Rule 4.31(b) and Rule 4.21(b) for CTAs and CPOs, respectively.

[96] As noted previously, the requirement of a signed acknowledgment of receipt is distinct from that of delivery, *i.e.,* an adequate delivery mechanism may be implemented without receipt of a signed acknowledgment of receipt. In the recent revisions to Part 4, 60 FR 38146 (July 25, 1995), the Commission confirmed the importance of the requirement that the prospective investor separately acknowledge receipt of the required Disclosure Document but commented that ''an acknowledgment may be included in the subscription documents for a pool, provided that the text of the acknowledgment is prominently captioned and distinguished from the subscription agreement and that there is a separate line for the acknowledgment signature and date thereof.'' 60 FR at 38181.

[97] *See* Commission Rules 4.23(a)(3) and 4.33(a)(2), respectively.

[98] Advisory No. 28–96, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996), discussed *supra* note 25.

accompanied by a unique and valid PIN, and the recipient knows the identity of the person who requested and received such PIN, it then may confirm the identity of the sender of such message. Second, use of PINs helps to protect innocent persons from false claims that they have sent a particular electronic communication. If a message is sent by one person claiming to be another, the failure to include the valid PIN assigned to such person would render the message invalid. Although the Commission invites comments from interested parties generally on methods to assure the validity of electronic acknowledgments, it believes that a PIN system similar to that used by FCMs for the filing of financial reports with certain self-regulatory organizations would provide an acceptable form of obtaining acknowledgments of receipt of Disclosure Documents. Under Rules 4.21(b) and 4.31(b), CPOs and CTAs bear the burden of obtaining a valid acknowledgment of receipt from prospective pool participants and clients; they are thus responsible for establishing procedures adequate to establish the authenticity of electronic acknowledgments and to preserve records thereof. Currently, in light of this concern, if a CTA or CPO wishes to establish a system for the electronic acknowledgement of receipt of a Disclosure Document, it must create a procedure by which the prospective client or pool participant requests and receives by means of electronic or postal mail an individualized PIN from the CPO or CTA. Once a person receives a PIN, he may then use that PIN in lieu of a manual signature to authenticate the acknowledgment of receipt.[99] The mechanics of using a PIN signature are illustrated by example below. The Commission welcomes comment concerning other procedures for electronic acknowledgment that are consistent with the objectives stated above.

Of course, CTAs or CPOs, even those providing a Disclosure Document by electronic media, are not required to obtain acknowledgments of receipt electronically. A CTA or CPO may require that the prospective client or pool participant provide a signed and dated paper acknowledgment by mail or facsimile, although the acknowledgment form may be sent to prospective investors by mail, facsimile, or through the Internet.

Format. The Commission's rules contain a number of specific format requirements relevant to Disclosure Documents, reflecting the Commission's determination that certain information should be accorded special prominence in the Disclosure Document. Parameters for the order of presentation ensure that certain key information is presented first, that important disclosures are not minimized or relegated to the end of the document, and that information of lesser relevance is placed after matters of greater importance. The prescribed order also facilitates the comparison of documents by maintaining the same sequence of topics across documents of different registrants. For example, Rules 4.24, 4.25, 4.34 and 4.35 include specifications as to the placement in Disclosure Documents of required risk disclosure and cautionary statements, tables of contents, and supplemental information, as well as the sequence of various past performance records.[100] In addition, certain items are required to be set forth in capital letters and bold-face type, certain information is required to be accompanied by cautionary legends or disclaimers, and in some contexts, page number cross-references are required.[101]

Where Commission rules specify the prominence, location, or other attributes of the information required to be delivered, any acceptable electronic presentation of such information used to satisfy Commission rules must present the information in the same format and order as specified in Commission rules and must reflect (if it does not actually replicate) the differences in emphasis and prominence that would exist in the paper document.[102] Further, the addition of any audio, video or graphic material, whether included as separate sections or as enhancements or overlays to written text, must be consistent with the requirements of Commission rules regarding the order of presentation and the relative prominence of information.[103] Such material would constitute ''supplemental information'' [104] and thus must be presented in the Disclosure Document in accordance with Rules 4.24(v) and 4.34(n).[105] Such material may not be presented in a manner that obscures or diminishes the prominence of any required disclosures. If one version of a document contains audio, video, graphic or other material that cannot be included in another version, *e.g.*, if the electronic version of a Disclosure Document has an audio narration, such material must be reproduced in the medium of the version that does not actually contain the material.[106]

Modifications. Commission Rules 4.26 and 4.36 require that Disclosure Documents be used for no more than nine months and that performance information included therein be current as of a date not more than three months prior to the date of the Disclosure Document. Additionally, if at any time the Disclosure Document becomes materially inaccurate or incomplete, the registrant must correct the defect and distribute the correction to, in the case

[99] The Commission notes that various states have established or are developing requirements for ''digital signatures.'' *See, e.g.,* ''Utah Digital Signature Act,'' Utah Code Ann. 46–3–101 *et seq.* (1995). To the extent that a particular state recognizes as valid only certain digital signatures, it is the responsibility of the registrant to ensure compliance with such rules in order to comply with state law requirements.

[100] *See* Rules 4.24(a) through (d), 4.24(v), 4.25(a)(2) and (3), 4.34(a) through (d), 4.34(n) and 4.35(a)(2).

[101] *See* Rules 4.24 (a) and (b), 4.25 (a)(9) and (c), 4.34 (a) and (b), 4.35 (a)(8) and (b) and 4.41(b)(1).

[102] For example, where text is required to be presented in bold-face type, acceptable on-screen presentation could be accomplished by changing the color or shading of the text and/or the background in a prominent manner. In addition, information such as the break-even point per unit of initial investment must be presented in the forepart of the Disclosure Document and the Risk Disclosure Statement, which must appear immediately following disclosures required to be on the cover of the Disclosure Document, must highlight the page (or highlight the link) where the break-even point is presented. If the document is not paginated, a registrant may use hyperlinks in lieu of page numbers.

[103] For example, Rule 4.25(a)(3)(ii) requires that performance results for pools of a different class from the offered pool be presented ''less prominently'' than the performance of pools of the same class. Audio, video or graphic devices may not be used in a manner that is inconsistent with this requirement. Similarly, an audio voice-over that asks a prospective client to turn directly to the CTA's performance tables, bypassing the cautionary and risk disclosure statements and the forepart information required by Rule 4.34 (a), (b) and (d), is not permitted.

[104] ''Supplemental information'' refers to ''information not specifically called for by Commission rules or federal or state securities laws or regulations.'' 60 FR at 38150.

[105] Rules 4.24(v) and 4.34(n) specify that supplemental performance information (not including proprietary, hypothetical, extracted, pro forma or simulated trading results) must be placed after all required performance information in the Disclosure Document and that supplemental non-performance information relating to a required disclosure may be included with the related required disclosure. Other supplemental information may be included only after all required disclosures. 17 CFR 4.24(v) and 4.34(n). Rules 4.24(v) and 4.34(n) also provide that supplemental information may not be misleading in content or presentation or inconsistent with the required disclosures and is subject to the antifraud provisions of the Act and Commission and NFA rules.

[106] Commission Rules 4.26(d) and 4.36(d) require that a CPO or CTA, respectively, file a Disclosure Document with the Commission prior to its use. To the extent that a Disclosure Document contains any audio, video, or graphic material, the CPO or CTA must file that version as well as any paper version. CPOs and CTAs who are required to file a Disclosure Document that contains audio, video, or graphic portions should contact the Division of Trading and Markets to establish a method whereby the Commission may receive such documents.

of a CPO, all existing pool participants and previously solicited pool participants prior to accepting or receiving funds from such prospective participants,[107] and in the case of a CTA, all existing clients in the trading program and each previously solicited client for the trading program prior to entering into an agreement to manage such prospective client's account.[108] For persons who have consented to receive such information electronically, registrants may provide amendments and updates in the same manner, provided that such recipients' consent to the use of electronic media extends to amendments and updates.

One of the salient features of electronic media is the ability to modify or update information more simply and more frequently than in a paper environment. On the Internet, many financial service providers update their performance on a daily basis, a practical impossibility using conventional postal mail.[109] The Commission believes that the greater timeliness of information that electronic media is capable of providing is an important benefit. Certainly, therefore, information contained in electronic form can be expected to be at least as current as that in paper form. Consequently, where a registrant employs electronic and paper media, the electronic version of any publicly disseminated document must be at least as current as any paper-based version. If registrants elect to update their performance more frequently than is required, any such performance history must be calculated and presented in accordance with Commission rules.

Record Retention. Another important area of regulatory concern in the context of electronic media is that of recordkeeping, as provided by Commission Rules 4.23 and 4.33.[110] These rules require that CPOs and CTAs keep, among other records, ''the original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be delivered * * * showing the first date of distribution or receipt if not otherwise shown on the document.'' [111] The Commission's Part 4 recordkeeping requirements thus extend to the contents of CTA and CPO websites and related electronic mail messages. The Commission's rules concerning the use of electronic media for recordkeeping, *e.g.*, optical disk or CD-ROM storage, permit storage of computer generated records in ASCII or EBCDIC format only.[112] These formats generally do not allow storage of paper records or electronic images, such as webpages, since such records or images are normally not written in ASCII or EBCDIC format. Therefore, these records would be required to be retained in hardcopy form. The Commission invites interested parties to comment concerning whether these rules, and in particular, Rule 1.31, are sufficient to address record retention in the current electronic environment.

The following examples are illustrative of the requirements discussed above.

(22) *(Hyperlink to Disclosure Document From Homepage Satisfies Delivery Obligation)* RST is a CTA who operates a site on the World Wide Web. RST provides copies of its Disclosure Documents, in an acceptable format, which visitors to its website can access from a menu of options at the beginning of its website. Before the visitor may access data on the website other than the menu or table of contents, such as a description of RST's principals and summaries of its trading programs, performance data, or other matters, visitors must select and view a Disclosure Document for the trading program(s) in which they are interested. By providing access to each of these Disclosure Documents and assuring that the visitor has reviewed the Disclosure Document prior to proceeding, RST has complied with Rule 4.31(a), which requires that at or before the time a CTA solicits a prospective client, the CTA deliver to the prospective client a Disclosure Document for the trading program pursuant to which the CTA will direct or guide the account.

(23) *(Obtaining Informed Consent)* GHJ is a CTA with a site on the World Wide Web. On the first page of GHJ's website, and before any solicitation materials are presented, is a page requesting informed consent from visitors to receive GHJ's Disclosure Document by electronic means. This page informs visitors that: (a) prospective managed account clients must receive a Disclosure Document; (b) they can receive the Disclosure Document in hardcopy if they prefer; (c) the electronic version of the Disclosure Document will be contained in a portion of GHJ's website; (d) persons accessing the electronic version of the Disclosure Document may incur charges relating to on-line access fees; (e) the original Disclosure Document as well as any amendments thereto will be provided on the website; and (f) visitors have the right to revoke their consent to receive electronic delivery at any time. At the bottom of the webpage is a button for visitors to ''click'' if they consent to receive electronic delivery of GHJ's Disclosure Document and any amendments thereto. If a visitor ''clicks'' on the acknowledgment button, he is hyperlinked to a copy of GHJ's Disclosure Document. If a visitor ''clicks'' on a button signifying that he does not provide his consent to receive a Disclosure Document by electronic means, he is then hyperlinked to a form asking for his name and postal address, which will be used to send a hardcopy Disclosure Document through postal mail and is not allowed to view any other portions of the website. GHJ's website properly obtains informed consent from visitors. Before engaging in any solicitation activity, GHJ obtains informed consent to deliver the Disclosure Document electronically. Then, immediately upon receipt of such consent, visitors are delivered the Disclosure Document. Once a visitor scrolls down to the end of the Disclosure Document and acknowledges that he has received the Disclosure Document, he may view other data on the site. However, before the visitor may open a managed account with GHJ, an acknowledgment of receipt of the Disclosure Document in accordance with Rule 4.31(b) must be obtained, either electronically (*see* example 25 below) or in hardcopy.

(24) *(Registrant May Require Acknowledgment to be Returned by Postal Mail)* X, a registered CTA, has established a site on the World Wide Web. After users review X's Disclosure Document, they may access other portions of X's website. In the section dealing with opening an account, users are informed that before a trading account may be opened with X, a prospective client must download X's Disclosure Document and return a signed acknowledgment of receipt thereof. On X's website is a form receipt of acknowledgment, with a statement informing the user that the acknowledgment must be printed, and signed, dated and returned to X by postal mail before X will open an account for the user. Receipt of such an acknowledgment would comply with Rule 4.31(b). Registrants are permitted to distribute Disclosure Documents to prospective clients electronically and may obtain acknowledgments of receipt electronically. However, they are not required to do so. A CTA operating a site on the World Wide Web may require that acknowledgments be signed, dated and returned by postal mail.

(25) *(Acknowledgments May Be Signed Electronically With a Personal Identification Number)* LMN, a registered CTA, operates a

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[107] 17 CFR 4.26(c)(1).

[108] 17 CFR 4.36(c)(1).

[109] Indeed, by the time the recipient received such updated information, it would already be out of date.

[110] For instance, Rule 4.23(a)(9) provides that a CPO must keep:

The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity pool operator to any existing or prospective pool participant or received by the pool operator from any commodity trading advisor of the pool, showing the first date of distribution or receipt if not otherwise shown on the document.

Analogous requirements for CTAs are found in Rule 4.33(a)(7).

[111] Commission Rules 4.23(a)(9) and 4.33(a)(7).

[112] 17 CFR 1.31(d). *See* 58 FR 27458, 27462–63 (May 10, 1993).

site on the World Wide Web. LMN's website permits prospective clients to acknowledge receipt of its Disclosure Document by electronic media. Jill Doe visits LMN's website and wishes to open a managed futures account. LMN's website instructs Jill Doe that in order for her to acknowledge receipt of its Disclosure Document, she must receive a PIN. LMN's website asks Jill Doe to provide her electronic mail address, to which a PIN may be sent. Upon receipt of Jill Doe's electronic mail address, LMN then sends her a PIN. Jill Doe may then use that PIN in lieu of a manual signature required under Commission Rule 4.31(b).

(26) *(Consent To Receive Monthly Statements Electronically Can Be Withdrawn)* JKL is the registered CPO of the Fund. John Smith and Jane Doe are both participants in the Fund. In September, JKL sends a notice to participants indicating that it will be sending monthly account statements to participants via electronic mail through the Internet, as Microsoft Word documents. JKL informs all pool participants that persons wishing to receive monthly account statements by means of electronic mail may incur costs relating to on-line access time, maintaining an electronic mail account, and owning a licensed copy of Microsoft Word. Further, JKL informs pool participants that electronic delivery of the monthly account statements will begin in January 1997. At the bottom of the notice is a form for participants to complete if they are interested in receiving monthly account statements electronically. The form asks for the participant's electronic mail address and for the participant's signature agreeing to the conditions of the electronic delivery.

John Smith and Jane Doe complete the form and mail it back to JKL in November. In December, John Smith decides that he prefers to receive monthly account statements by means of postal mail and notifies JKL that he no longer agrees to electronic delivery. In January, JKL can send monthly account statements to Jane Doe by means of electronic mail but must send such statements to John Smith by means of postal mail. The requirements for manual signatures under 4.22(h) for these reports will be satisfied if JKL keeps such signed reports in paper form at its place of business.

(27) *(Registrant Must Abide by Parameters of Consent)* In the same example as above, JKL now decides to post its monthly account statements on its World Wide Web homepage. JKL sends electronic mail to Jane Doe informing her that the monthly account statement can be accessed on JKL's homepage on the World Wide Web. This form of delivery would not satisfy the requirements of Rule 4.22. Jane Doe has only consented to receive monthly account statements as Microsoft Word attachments to Internet electronic mail. If JKL changes its method of electronic delivery, it must again obtain informed consent from pool participants. Jane Doe's consent to receive monthly account statements was limited to the means specified in the September notice. JKL cannot assume that Jane Doe has access to the World Wide Web or that she will agree to receive her monthly account statements by viewing them on JKL's homepage.

(28) *(Use of Hyperlinks in Table of Contents Acceptable)* WXY, a CPO, posts her Disclosure Document on the World Wide Web. As it appears on the World Wide Web, the Disclosure Document is without any ''pages;'' instead it is a continuous stream of HTML text, which contains all of the required disclosures. In lieu of page numbers as contemplated by Rule 4.24, WXY has placed in the table of contents a series of hyperlinks, *i.e.*, subject headings which trigger access to the various sections of the Disclosure Document. In addition, in the Risk Disclosure statement, where page numbers are required for the discussion of expenses, break-even point and principal risk factors, WXY has provided hyperlinks to those sections. This would comply with the format requirements of Rule 4.24. Where a Disclosure Document is posted on the World Wide Web without pages, the CPO may use readily comprehensible hyperlinks instead of page numbers to denote specific sections. Both page numbers and hyperlinks allow the reader to locate a particular section.

(29) *(Electronic Version Identical to Paper Version)* ABC is a CTA who operates a homepage on the World Wide Web, with a hyperlink to enable visitors to download her Disclosure Document. The Disclosure Document can be downloaded in a form compatible with Microsoft Word for Windows or WordPerfect for DOS. Once downloaded, the Disclosure Document is in all respects identical to the paper version, including page numbers, bold-faced text and capsule performance information. In this case, ABC has met the format requirements of Rules 4.34.

(30) *(Electronic Version of Disclosure Document May Include More Recent Performance Data)* ABC is a CTA who operates a website. ABC's hardcopy Disclosure Document is dated August 1 and reflects the ABC's performance through July 31. It is now October 1, and ABC wants to amend the performance section of its Disclosure Document that appears on the website to include performance through September 30. ABC may amend the performance section of the website Disclosure Document to include more recent performance data. However, the calculation and presentation of such recent performance data must be in accordance with Commission rules. ABC is not required to amend its hardcopy Disclosure Document, which still may reflect ABC's performance through July 31. Under Rule 4.26, ABC may solicit prospective clients with the October 1 Disclosure Document and the version on its website with more recent performance data. However, on May 1 of the next year (*i.e.*, nine months after date of the hardcopy Disclosure Document), ABC may no longer use the hardcopy Disclosure Document. Beginning May 1, ABC must use a new Disclosure Document. In addition, the Disclosure Document used on the website, which contains updated performance data, must also be amended to conform to any other changes reflected in the new hardcopy Disclosure Document.

(31) *(Disclosure Documents Delivered Electronically Must Be Current and Updated)* DEF is a CTA who distributes a hardcopy of its Disclosure Document and also operates a website with an electronic version of its Disclosure Document. DEF solicits through its website but also sends each prospective client a hardcopy of its Disclosure Document via postal mail. The Disclosure Document DEF sends its prospective clients has been updated to reflect some material changes, but the electronic version on the Internet has not. DEF is in violation of Rule 4.36. Even though DEF provides its prospective customers with a current version of its Disclosure Document, it may not solicit customers using a superseded or out-of-date Disclosure Document.

(32) *(Outdated Disclosure Documents May Not Be Used on Electronic Media)* ABC is a CTA who operates a site on the World Wide Web. ABC's website contains a Disclosure Document that is more than nine months old. The website also contains a form that allows persons to request a current version of ABC's Disclosure Document. ABC is in violation of Rule 4.36. Even though ABC allows prospective clients to obtain a current version of its Disclosure Document, ABC may not continue to provide its out-of-date Disclosure Document on the World Wide Web.

(33) *(Outdated Disclosure Document Contained on CD–ROM Cannot Be Used To Solicit Clients)* RST is a CTA who has created a CD–ROM containing promotional materials and a Disclosure Document. The date of the Disclosure Document on the CD–ROM is January 15, 1995. On December 15, 1995, RST provides a prospective client with a copy of his CD–ROM but at the same time provides the client with a revised Disclosure Document dated October 1, 1995, which reflects certain material changes. Even though RST has provided the prospective client with a revised Disclosure Document, RST is in violation of Rule 4.36(b) because the CD–ROM contains a Disclosure Document dated more then nine months prior to its use. After October 15, 1995, RST may no longer distribute the CD–ROM with the Disclosure Document dated January 15, 1995.

IV. Electronic Filing With the Commission

A. Pilot Program Commencing October 15, 1996

In response to numerous inquiries from managed futures professionals, the Commission is evaluating the potential benefits and costs of electronic document filing, both to registrants and to the Commission's regulatory program. The Commission is also considering the relative merits of several alternatives for implementing an electronic filing system. In furtherance of this objective, the Commission is announcing a pilot program for optional electronic filing of Disclosure Documents and is requesting comments concerning the standards and specifications that should be utilized if the Commission elects to establish a permanent program for electronic filing.

The Commission has determined to initiate a six-month pilot program for

electronic filing of CPO and CTA Disclosure Documents, commencing October 15, 1996. Participation in the pilot program will be voluntary and will be open to all registered CPOs and CTAs who are members of NFA. The pilot program will be conducted by the Commission's Division of Trading and Markets and will be restricted (at least initially) to electronic submission of Disclosure Documents (and amendments thereto) which CTAs and CPOs are required to file with the Commission pursuant to Rules 4.36 and 4.26, respectively. Electronic filing of other documents, such as annual reports for commodity pools required to be filed pursuant to Rule 4.22, and documents filed to obtain relief available under certain Commission rules, such as notices of eligibility under Rule 4.5, notices of claims of exemption under Rule 4.7, claims of exemption under Rule 4.12(b) and notices of exemption under Rule 4.14(a)(8), may be implemented in the future.[113] Participation in the pilot program will not obligate a registrant to provide its Disclosure Documents to prospective clients or pool participants by electronic means.

Under the pilot program as currently envisioned, a partici-pating registrant will transmit its Disclosure Document, as an attachment to electronic mail, to an address specified by the Commission for purposes of this program. Receipt of the filed document will be acknowledged by electronic mail, followed by the customary review process conducted by Commission staff. Electronic mail also may be used by Commission staff for providing comments on the filed Disclosure Document and by the registrant to submit document revisions in response to staff comments.

The Commission's pilot program will accommodate use of two widely utilized commercial word processing systems without the need for extensive formatting specifications, and it will not require specialized coding and formatting of numerical tables. At the outset, Documents filed under the Commission's pilot program will not be made publicly available in an electronic equivalent of a public reference room, as is currently the case with the document dissemination function of the EDGAR system; however, this enhancement may be considered in the future.[114]

B. Filing Procedure Under the Pilot Program

The Commission is establishing the following procedures for CTAs and CPOs seeking to employ electronic filing under the pilot program. The Commission welcomes comments concerning the adequacy and appropriateness of these requirements, and suggestions concerning any additional criteria that the Commission should consider in the pilot program.

Beginning October 15, 1996, a CPO or CTA may file a Disclosure Document (or amendment) by taking the following steps:

1. Save the Disclosure Document as a WordPerfect for DOS (version 5.1 or earlier) or a Microsoft Word for Windows (version 6.0 or earlier) file. Retain both a hardcopy and a diskette or tape backup.

2. Use the participating registrant's NFA identification number as the file name for the saved Disclosure Document, and add a file extension (DD1, DD2, DD3, . . . D10, D11, etc.) indicating whether the submission is sequentially the first, second, etc. submission by the registrant.[115]

3. Add the file as an attachment to an electronic mail message addressed to tm-pilot-program@cftc.gov.[116] Persons who participate in the pilot program must agree to receive comments from Commission staff by electronic mail. Accordingly, the message text should include the electronic mail address where comments, if any, may be sent. Confirmation of receipt of the filed Disclosure Document will be provided by Commission staff to the electronic mail address supplied by the participating registrant, and the Disclosure Document will undergo the customary review process. Following review of the filed document, staff comments also will be transmitted to the participating registrant's electronic mail address as an electronic mail attachment in Microsoft Word for Windows or WordPerfect 5.1 for DOS format.

4. Submit the registrant's response to staff comments by electronic mail message to the Commission's electronic mail filing address. The message should indicate the date of the staff comment message, and any revised text or pages should be attached in the same manner as the original filing (using the registrant's NFA identification number and the appropriate sequential file extension as described in No. 2, above).

For purposes of the pilot program, a document of up to one megabyte (approximately 230 pages) can be received as an electronic mail attachment. If a participating registrant's Disclosure Document exceeds one megabyte, the registrant should contact the Division of Trading and Markets, Managed Funds Branch, for guidance.

C. Expansion of Pilot Program; Request for Comments

The Commission intends to use its experience with the pilot program to develop and implement a permanent system for electronic filing of Disclosure Documents. As stated previously, the Commission will also consider permitting electronic filing of other types of required documents (*e.g.*, annual reports to commodity pool participants, and notices of claims of exemption filed pursuant to Commission rules), as well as permanent implementation of electronic filing of CPO and CTA Disclosure Documents, either as an alternative to paper filing or as the sole filing method.

Interested persons are invited to comment on the proposed structure of the pilot program, as well as the contemplated adoption of a permanent electronic filing system. Specifically, the Commission seeks comment on: (1) whether it is preferable to retain the option for registrants to submit documents in paper form or to eliminate that alternative in favor of a universal requirement to file electronically; (2) whether security concerns make it advisable to require that filings be encrypted or otherwise protected from unauthorized interception and use, and if so, what measures would be appropriate (*e.g.*, commercially available encryption software); (3)

[113] The Commission is considering electronic filing of the entire range of documents and reports covered by the Act and Commission rules, including without limitation, Forms 1–FR for FCMs and IBs, Form 103 (Large Trader Reporting Form), and Form 40 (Statement of Reporting Trader). As noted in Section I, the Commission has approved self-regulatory organization (''SRO'') programs (notably those of the CBT and the CME) permitting FCMs and IBs to file electronically with such SROs the periodic financial reports on Form 1–FR required by Commission Rule 1.10. In Advisory 28–96, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,711 (May 28, 1996), the Commission noted its intention to implement procedures to permit FCMs and IBs that file electronically with SROs also to file their financial reports electronically with the Commission.

[114] Persons may, of course, obtain hardcopies of Disclosure Documents filed under the pilot program through a request made under the Freedom of Information Act, 5 U.S.C. 552 (1994), as implemented in Part 145 of the Commission rules.

[115] For example, XYZ, whose NFA identification number is 99999999, is a CTA with separate Disclosure Documents for two trading programs. XYZ names one Disclosure Document ''99999999.DD1'' and the other ''99999999.DD2.'' The first amendment to either Disclosure Document will be named ''99999999.DD3,'' and each subsequent submission will follow the same pattern. In the event that a registrant has more than one version of the Disclosure Document for a particular trading program or pool offering, each version would similarly be given a separate file extension.

[116] Persons participating in the pilot program are not required to make duplicate filings under Rules 4.26(d) or 4.36(d).

whether there is a need for a graphics capability (beyond that currently offered by the WordPerfect 5.1 for DOS and Microsoft Word for Windows programs) to permit transmission of pictorial or graphic material included in Disclosure Documents or in other documents required to be filed with the Commission; (4) whether the Commission should specify uniform formatting requirements for electronically-filed documents (*e.g.*, margin dimensions, type font and point size, pagination, etc.) and if so, what the appropriate requirements would be; and (5) whether the selection of word processing formats currently being considered by the Commission for use in the pilot program (WordPerfect 5.1 for DOS or Microsoft Word for Windows) is adequate, and if not, which additional word processing programs or text formats registrants should be permitted to use.

D. Unsolicited Proposal Recently Presented to the Commission

The Commission has been approached by a prospective vendor (''Vendor'') with a proposal to implement a system to permit electronic filing of Disclosure Documents utilizing a computer system developed by Vendor. The Vendor's prototype system assumes use of a WordPerfect or Microsoft Word word processing system in a Microsoft Windows operating system environment. Registrants would download from the Commission's Internet website a document ''packaging'' program, which would prompt the registrant to provide identifying information and facilitate secure uploading of the registrant's Disclosure Document to Vendor's system.[117] Vendor has offered to develop a separate program for Commission staff handling and tracking of filed Disclosure Documents during the review process. Vendor's system, if implemented, may be designed to accommodate other required Commission filings, including CPO annual reports to pool participants. Under one variation of Vendor's system, filed Disclosure Documents would ''reside'' electronically on a server located at Vendor's offices, rather than at the Commission's headquarters.

The Commission plans to publish in *Commerce Business Daily* a notice seeking information and indications of interest on the part of proprietary vendors and developers of data processing and telecommunication systems with respect to developing and implementing a system to accept, track and control electronically-filed documents, as well as incoming and outgoing correspondence in connection with such documents.

Comment is sought regarding the advisability of the Commission's selecting and entering into a contractual relationship with one or more independent vendors to facilitate electronic filing of documents on behalf of the Commission, and/or to serve as a repository or dissemination point to provide public access to electronically-filed documents. Finally, to the extent that a filing fee would be necessary to cover the operating and development costs of Vendor's system, the Commission seeks comment on the willingness of registrants to bear such costs and suggestions concerning how such fees should be calculated.

E. Future Releases

The Commission invites comment not only on the specific issues discussed in this release, but also on any other approaches or issues that should be considered in connection with facilitating the use of electronic media. In the future, the Commission may issue further releases, as may be suitable to expand or provide additional guidance regarding the pilot program; to propose and adopt rules and amendments to existing rules to implement electronic filing procedures; or to give guidance generally with respect to the use of electronic media in the context of the Commission's regulatory program.

Issued in Washington, DC, on May 8, 1996, by the Commission.

Catherine D. Dixon,

Assistant to the Secretary of the Commission.

[FR Doc. 96–20691 Filed 8–13–96; 8:45 am]

BILLING CODE 6351–01–P

[117] The document packaging software includes a scrambling or encryption function enabling transmission of the document over phone lines without permitting unauthorized persons to read or alter the text.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8682]

RIN 1545–AU23

Treatment of Section 355 Distributions by U.S. Corporations to Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations amend the Income Tax Regulations relating to the distribution of stock and securities under section 355 of the Internal Revenue Code of 1986 by a domestic corporation to a person that is not a United States person. These regulations are necessary to implement section 367(e)(1) as added by the Tax Reform Act of 1986. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective September 13, 1996.

FOR FURTHER INFORMATION CONTACT: Philip L. Tretiak at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1487. Responses to this collection of information are required in order for a U.S. corporation that distributes domestic stock or securities to a foreign person to qualify for an exception to the general rule of taxation provided by the regulations under section 367(e)(1).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the Federal Register.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 16, 1990, temporary regulations under section 367(e)(1) and 367(e)(2) were published in the Federal

Register (55 FR 1406). A cross-referenced Notice of Proposed Rulemaking was published on that same date (55 FR 1472). These regulations were proposed to implement section 367(e) of the Internal Revenue Code of 1986 (Code), as revised by sections 631(d)(1) and 1810(g) of the Tax Reform Act of 1986 (100 Stat. 2085, 2272, Public Law 99–514 [1986–3 C.B. (Vol. 1) 1, 189, 745]). On January 15, 1993, final regulations under section 367(e)(1) were published in the Federal Register.

Need for Temporary Regulations

Under the current regulations, in certain circumstances the gain recognition exception may be dependent on the form rather than the substance of a taxpayer's transaction. As a result, certain taxpayers may be subject to strict restrictions under this exception, while other taxpayers arguably may avoid the restrictions by structuring their transactions in a different fashion (even though the substance of the transactions is similar). Based on these considerations, it is determined that immediate regulatory guidance will ensure the efficient administration of the tax laws and that it would be impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b).

Explanation of Provisions

Section 355 provides that, if certain requirements are met, a distributing corporation (Distributing) does not recognize gain or loss on the distribution of the stock or securities of a controlled corporation (Controlled) to Distributing's shareholder or shareholders (Distributee(s)). However, section 367(e)(1) provides that, in the case of any distribution described in section 355 (or so much of section 356 as relates to section 355) by a domestic corporation to a Distributee who is not a United States person (an outbound section 355 distribution), to the extent provided in regulations, gain shall be recognized under principles similar to the principles of section 367.

The existing regulations under section 367(e)(1) provide different tax treatment to Distributing in an outbound section 355 distribution depending upon whether Controlled is a foreign corporation or a domestic corporation. If Controlled is a foreign corporation, an outbound section 355 distribution by Distributing is taxable, with no exceptions. If Controlled is a domestic corporation, however, the existing regulations provide that the distribution is taxable, but permit three exceptions: (i) a FIRPTA exception in cases where both Distributing and Controlled are U.S. real property holding corporations (as defined in section 897(c)(2)) at the time of the distribution, (ii) a publicly traded exception in certain cases where Distributing is publicly traded in the United States at the time of the distribution, and (iii) a gain recognition agreement (GRA) exception described in detail below.

The new temporary regulations retain the general framework of the existing regulations by permitting no exceptions in the case of an outbound section 355 distribution of foreign stock and the same three exceptions in the case of an outbound section 355 distribution of domestic stock. However, the new temporary regulations substantially modify the GRA exception.

The temporary regulations retain many of the provisions from the existing regulations. However, the IRS and Treasury have decided to reissue all of the regulations under section 367(e)(1) as temporary regulations to obtain a uniform set of regulations.

GRA Exception Under the Existing Regulations

The GRA exception in the existing regulations contains a number of specific requirements, all of which must be satisfied for the distributing corporation to defer taxation under the exception.

In general, if Distributee is a resident of a country that has an income tax treaty with the United States and meets certain other requirements, Distributing can defer its gain by entering into a GRA. Under the GRA, if a (foreign) Distributee sells all or a portion of the stock of either Distributing or Controlled within 60 months after the close of the taxable year in which the distribution occurs, Distributing agrees to amend its return and include the deferred gain in income based upon the proportion of the stock that is sold by Distributee. Thus, for example, if Distributee sells 10 percent of its stock of Distributing or Controlled, Distributing is required to amend its return to include 10 percent of the deferred gain. There is no special rule (i.e., no full trigger of the deferred gain) if Distributee sells a substantial amount of its stock of either company. In addition, there is no special rule that triggers gain in the case of a nonrecognition transaction (such as the issuance of additional stock by either Distributing or Controlled to third parties through a public offering) that results in a substantial reduction of the percentage of stock owned by Distributee(s).

The existing regulations generally provide that the GRA will not be triggered if Distributee transfers the stock of either Distributing or Controlled in certain nonrecognition transactions (permitted transactions). The transfer of the stock of either company in a (second) section 355 distribution, however, is not permitted.

In the case of a permitted transaction, the existing regulations provide special successor-in-interest rules under which the deferred gain generally will be taxable unless Distributee maintains a direct or indirect 80 percent interest in the stock of Distributing and Controlled that it owned immediately after the distribution. For example, if Distributing distributed the stock of Controlled in an outbound section 355 distribution that qualified for the GRA exception and, within the term of the GRA, Distributee then contributed the stock of Distributing to a new company (Newco) in a section 351 exchange and received 100 percent of Newco, the successor-in-interest rules apply. Thus, Distributee generally would be required to maintain an 80 percent indirect interest in Distributing. Under these rules, (i) Distributee's sale of up to 20 percent of the stock of Newco, or (ii) Newco's sale of up to 20 percent of the stock of Distributing would result in a corresponding trigger of the deferred gain. The issuance of new stock by Newco or Distributing of up to 20 percent to unrelated persons, however, would not result in any trigger of the GRA. If, however, Newco (or Distributing) issued more than 20 percent of its stock to unrelated persons (or any other nonrecognition transaction reduced Distributee's indirect interest in Distributing to below 80 percent as a result of a nonrecognition transaction), the entire gain would be triggered.

Reasons for Change/Overview of Temporary Regulations

The treatment of non pro rata outbound section 355 distributions is not adequately addressed in the existing regulations. For example, assume that a foreign parent (FP) owns all of the stock of Distributing, a domestic corporation, which, in turn, owns all of the stock of Controlled, also a domestic corporation. Assume that the distribution of Controlled by Distributing to FP qualifies for the GRA exception. If FP then contributes all of the stock of Distributing to a newly formed foreign corporation (Newco), the successor rules would apply, and FP would be required to maintain a direct or indirect 80 percent interest in Distributing.

The outcome under the existing regulations arguably is substantially different, however, if the corporations structured the distribution as a non pro

rata distribution. For example, assume that FP first forms Newco and transfers to Newco a percentage of the Distributing stock (the percentage equal to the value of Distributing (without the Controlled stock) divided by the combined value of Distributing and Controlled) in an exchange under section 351. Distributing then distributes the stock of Controlled to FP in exchange for FP's stock of Distributing (a non pro rata section 355 distribution). After the distribution, FP owns all of the stock of Controlled and all of the stock of Newco; Newco owns all of the stock of Distributing. Under the existing regulations, FP is a Distributee. However, because FP has no direct interest in Distributing after the distribution, the regulations effectively treat FP as a Distributee only with respect to Controlled. Moreover, because Newco does not actually receive stock of Controlled in the distribution (even though its percentage ownership interest in Distributing increases as a result of the distribution), it is arguably not a Distributee with respect to the Distributing stock. As a result, because the taxpayer structures the transaction in this manner (rather than a section 355 distribution followed by a section 351 exchange as in the first hypothetical), if the steps of the transaction are respected and in the absence of the application of other sections of the Code, Distributing could take the position that there are no restrictions in the existing regulations with respect to (i) the sale by FP of Newco stock, or (ii) the sale by Newco of Distributing stock.

To remedy this potential disparity in treatment between pro rata and non pro rata distributions, the temporary regulations expand the definition of Distributee in the GRA exception (referred to as Foreign Distributee under such exception) to include all persons that were shareholders of Distributing immediately prior to the distribution. Thus, for example, in the second hypothetical above, Newco and FP would both be Foreign Distributees. Provided that nonrecognition treatment is claimed under the GRA exception with respect to Newco and FP (referred to as Qualified Foreign Distributees in the case of Foreign Distributees for which nonrecognition may be claimed), the GRA would be triggered by either (i) the sale by FP of Newco stock, or (ii) the sale by Newco of Distributing stock.

Second, even in the case of pro rata distributions, the IRS and Treasury believe that the results obtained under the existing regulations are too dependent upon the form of the transaction. This is principally because taxpayers could be subject to the stricter successor-in-interest rules if their transactions were structured in a particular way, but might be subject to the more liberal distributee rules if the order of the steps of the particular transaction are reversed.

In the preamble to the existing regulations, the IRS and Treasury stated that the successor-in-interest rules were ''designed to provide taxpayers with flexibility to restructure their operations, without imposing undue administrative burdens on the Service.'' The IRS solicited taxpayer comments on the scope of these rules. A number of commentators have stated that the rules are overly restrictive.

The temporary regulations harmonize the treatment of the distributee and successor-in-interest rules in order to minimize the importance of the form of a particular transaction. In addition, as discussed below, the temporary regulations liberalize the strict successor rules by replacing the 80-percent threshold (computed on an individual Distributee basis) with a 50-percent threshold (computed with reference to all Qualified Foreign Distributees as a group).

The temporary regulations follow the existing regulations by providing that a sale by a Qualified Foreign Distributee of the stock of either Controlled or Distributing triggers gain in the same proportion as the percentage of stock that is sold. However, the temporary regulations provide that a sale by Qualified Foreign Distributee(s) of either Distributing or Controlled that results in a substantial transformation results in a trigger of the full amount of the deferred gain. A substantial transformation is defined as a greater than 50-percent (direct or indirect) reduction, on an aggregate basis, in either the total voting power or the total value of the stock of Controlled or Distributing held by Qualified Foreign Distributee(s) immediately after the distribution. The new temporary regulations also provide that a nonrecognition transaction that results in a substantial transformation (such as the issuance of stock by Distributing or Controlled in a public offering) generally causes a trigger of the full amount of the deferred gain. No gain will be triggered if a nonrecognition transaction does not result in a substantial transformation.

The temporary regulations also expand the types of post-distribution nonrecognition transactions that are permitted transactions to include section 355 distributions. A post-distribution section 355 transaction may qualify for nonrecognition treatment if the foreign distributee (referred to as a Substitute Distributee) that receives stock of Distributing and/or Controlled qualifies as a Qualified Foreign Distributee. In such case, the Substitute Distributee will replace the initial Qualified Foreign Distributee as the person whose ownership interest is considered for purposes of determining whether a disposition or substantial transformation has occurred (on a cumulative, aggregate basis) with respect to such stock.

In addition, the temporary regulations provide that foreign persons that owned stock or securities of Distributing within two years prior to the distribution and that own (directly, indirectly, or constructively) 50 percent or more of the stock of Distributing or Controlled immediately after the distribution will also be considered Foreign Distributees. Thus, for example, if F1, a foreign corporation, transfers the stock of US1 to F2 in exchange for all of the stock of F2 in a section 351 exchange and, within two years after the transfer, US1 distributes all of the stock of US2, its wholly owned subsidiary, to F2 in a section 355 exchange, F1 is also treated as a Foreign Distributee under this rule. (F1 would have been treated as a Foreign Distributee without the operation of this rule if the section 355 distribution occurred prior to the section 351 exchange.)

The IRS and the Treasury also believe that certain procedural aspects of the GRA exception need modification. The temporary regulations enhance reporting and security requirements, extend the term of the GRA from 5 to 10 years, and delete other requirements that are believed to be unnecessary in light of the modifications herein.

To address the security concerns of the IRS resulting from the liberalization of the successor-in-interest rules and the expansion of permissible post-distribution nonrecognition transactions to include section 355 distributions, the assets of Distributing are more closely monitored to insure that such corporation has sufficient funds to pay a potential tax on the deferred gain. In addition, Controlled must agree to be secondarily liable (after Distributing) for the tax on the deferred gain.

Moreover, the new temporary regulations extend the term of the GRA from 5 to 10 years in order to conform the GRA term under section 367(e)(1) to the GRA term under section 367(a). Under section 367(a), the GRA term in the case of outbound stock transfers is 10 years when U.S. transferors own at least 50 percent of the stock of a foreign transferee company. See § 1.367(a)–3T(c)(3) and Notice 87–85 (1987–2 C.B. 395). The IRS and Treasury believe that

the GRA term under section 367(e)(1) should be no less than the term under section 367(a) when U.S. transferors control the transferee because, once the GRA under section 367(e)(1) expires, the sale of Distributing or Controlled stock by a Qualified Foreign Distributee likely will not be subject to Federal income taxation. In contrast, under section 367(a), even if the GRA lapses, an amount approximating the deferred gain likely will be subject to Federal income taxation if the U.S. transferor later sells the stock of the transferee foreign corporation.

Finally, the IRS and Treasury believe that section 367(e)(1) distributions should be subject to some form of section 6038B reporting, as are transfers described under sections 367(a) and 367(d). Thus, the temporary regulations extend limited section 6038B reporting to section 367(e)(1) transactions. The reporting requirements under section 6038B will be deemed satisfied in the case of a taxpayer that qualifies for one of the three exceptions to taxation under the regulations if the taxpayer complies with the applicable reporting requirements relating to the relevant exception. This change is also intended to extend the statute of limitations under section 6501(c)(8) in cases where distributing corporations do not properly report their outbound section 355 distributions. Separately, the temporary regulations provide new notice and reporting rules in cases where Distributing qualifies for either the FIRPTA or publicly traded exception.

Specific changes to GRA Exception in Temporary Regulations

The specific requirements of the GRA exception, as amended, are as follows:

(A) Ten or Fewer Qualified Foreign Distributees

The existing regulations provide that Distributing is permitted to claim nonrecognition with respect to 10 or fewer individual or corporate foreign distributees. A ruling is required in the case of a foreign distributee that holds its interest in Distributing through a partnership, trust, or estate (whether foreign or domestic). This requirement is unchanged in the temporary regulations.

(B) Active Trade or Business

The existing regulations provide that, if Distributee is a foreign corporation, it must be engaged in an active trade or business. This requirement is removed in the temporary regulations.

(C) Value of Distributing

The existing regulations provide that, immediately after the distribution, the value of Distributing must be at least equal to the value of the distributed stock and securities. This requirement is waived by the existing regulations if Distributing and Controlled are members of the same consolidated group at the time of the distribution. This requirement is revised in the temporary regulations to provide that the value of Distributing (the value of its assets less all of its liabilities) must be at least equal to the amount of the deferred gain on all testing dates during the GRA period. (Alternatively, Distributing may satisfy this test using the adjusted basis of its assets instead of fair market value.) A testing date is the last day of each taxable year of Distributing and any day in which Distributing distributes money or property to its shareholders (regardless of whether such distribution is treated as a dividend). The waiver in the existing regulations if Distributing and Controlled are members of the same consolidated group is eliminated in the temporary regulations.

(D) Treaty Residence

The existing regulations provide that all Distributees are required to be residents of a country that maintains a comprehensive income tax treaty with the United States that contains an exchange of information provision. This requirement is not changed in the temporary regulations.

(E) Continuity of Interest Rule

The existing regulations provide that the Distributee is required to continue to own, for a 60-month period, all of the stock of Distributing and Controlled that it owns at the time of the distribution. This requirement is maintained, but the period is increased to 120 months.

(F) Distributing Must Remain in Existence

The existing regulations provide that Distributing cannot go out of existence pursuant to the distribution. This requirement is maintained in the temporary regulations.

(G) GRA

The existing regulations provide that Distributing is required to enter into a 5-year GRA and receive annual certifications from Distributees, stating that they continue to own the stock that they held immediately after the distribution. The temporary regulations increase the GRA term to 10 years.

(H) Annual Certifications

The existing regulations provide that Distributees must provide their certifications directly to Distributing. Under the temporary regulations, Controlled also must provide an annual statement to Distributing, containing information regarding whether any of its Qualified Foreign Distributees have disposed of their stock in Controlled during the relevant taxable year.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation does not have a significant impact on a substantial number of small entities. This certification is based on the fact that the number of corporations that distribute stock or securities to foreign persons in transactions that qualify under section 355, and thus become subject to the collection of information contained in these regulations, is estimated to be only 260 per year. Moreover, because these regulations will primarily affect large multinational corporations with foreign shareholders, it is estimated that out of the 260 annual transactions subject to reporting, very few, if any, will involve small entities. Therefore, the regulations do not significantly alter the reporting or recordkeeping duties of small entities. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.367(e)–1 and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.367(e)–1T also issued under 26 U.S.C. 367(e)(1) * * *

§ 1.367 [Amended]

Par. 2. Sections 1.367(e)–0 and 1.367(e)–1 are removed.

Par. 3. Sections 1.367(e)–0T and 1.367(e)–1T are added to read as follows:

§ 1.367(e)–0T Treatment of section 355 distributions by U.S. corporations to foreign persons; table of contents.

This section lists captioned paragraphs contained in § 1.367(e)–1T.

§ 1.367(e)–1T Treatment of section 355 distributions by U.S. corporations to foreign persons.

§ 1.367(e)–1T Treatment of section 355 distributions by U.S. corporations to foreign persons (temporary).

(a) *Purpose and scope.* This section provides rules concerning the recognition of gain by a domestic corporation on a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic or foreign corporation to a person who is not a U.S. person. Paragraph (b) of this section states as a general rule that gain recognition is required on the distribution. Paragraph (c) of this section provides exceptions to the gain recognition rule for certain distributions of stock or securities of a domestic corporation. Paragraph (d) of this section refers to other consequences of distributions described in this section. Paragraph (e) of this section provides examples of these rules. Finally, paragraph (f) of this section specifies the effective date of this section.

(b) *Recognition of gain required*—(1) *In general.* (i) If a domestic corporation (distributing corporation) makes a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic or foreign corporation (controlled corporation) to a person who is not a qualified U.S. person, then, except as provided in paragraph (c) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 367(e)(1). No gain is required to be recognized under this section with respect to a distribution to a qualified U.S. person of stock or securities that qualifies for nonrecognition under section 355. For purposes of this section, a qualified U.S. person is—

(A) A citizen or resident of the United States; and

(B) A domestic corporation.

(ii) In the case of stock or securities owned through a partnership, trust, or estate, see paragraph (b)(5) of this section.

(2) *Computation of gain of the distributing corporation.* The gain recognized by the distributing corporation under paragraph (b)(1) of this section shall be equal to the excess of the fair market value of the stock or securities distributed to persons who are not qualified U.S. persons (determined as of the time of the distribution) over the distributing corporation's adjusted basis in the stock or securities distributed to such distributees. For purposes of the preceding sentence, the distributing corporation's adjusted basis in each unit of each class of stock or securities distributed to a distributee shall be equal to the distributing corporation's total adjusted basis in all of the units of the respective class of stock or securities owned immediately before the distribution, divided by the total number of units of the class of stock or securities owned immediately before the distribution.

(3) *Treatment of distributee.* If the distribution otherwise qualifies for nonrecognition under section 355, each distributee shall be considered to have received stock or securities in a distribution qualifying for nonrecognition under section 355, even though the distributing corporation may recognize gain on the distribution under this section. Thus, the distributee shall not be considered to have received a distribution described in section 301 or a distribution in an exchange described in section 302(b) upon the receipt of the stock or securities of the controlled corporation. Except where section 897(e)(1) and the regulations thereunder cause gain to be recognized by the distributee, the basis of the distributed domestic or foreign corporation stock in the hands of the foreign distributee shall be the basis of the distributed stock determined under section 358 without any increase for any gain recognized by the domestic corporation on the distribution.

(4) *Nonapplication of section 367(a) principles that provide for exceptions to gain recognition.* Paragraph (b)(1) of this section requires recognition of gain notwithstanding the application of any principles contained in section 367(a) or the regulations thereunder. The only exceptions to paragraph (b)(1) of this section are contained in paragraph (c) of this section. None of these exceptions applies to distributions of stock or securities of a foreign corporation.

(5) *Partnerships, trusts, and estates*—(i) *In general.*

For purposes of this section, stock or securities owned by or for a partnership (whether foreign or domestic) shall be considered to be owned proportionately by its partners. In applying this principle, the proportionate share of the stock or securities of the distributing corporation considered to be owned by a partner of the partnership at the time of the distribution shall equal the partner's distributive share of gain that would be realized by the partnership from a sale of stock of the distributing corporation immediately before the distribution (without regard to whether, under the particular facts, any gain would actually be realized on the sale

for U.S. tax purposes), determined under the rules and principles of sections 701 through 761 and the regulations thereunder. For purposes of this section, stock or securities owned by or for a trust or estate (whether foreign or domestic) shall be considered to be owned proportionately by the persons who would be treated as owning such stock or securities under sections 318(a)(2)(A) and (B). In applying section 318(a)(2)(B), if a trust includes interests that are not actuarially ascertainable and a principal purpose of the inclusion of the interests is the avoidance of section 367(e)(1), all such interests shall be considered to be owned by foreign persons. In a case where an interest holder in a partnership, trust, or estate that owns stock of the distributing corporation is itself a partnership, trust, or estate, the rules of this paragraph (b)(5) apply to individuals or corporations that own (direct or indirect) interests in the upper-tier partnership, trust or estate.

(ii) *Written statement.* If, prior to the date on which the distributing corporation must file its income tax return for the year of the distribution, the corporation obtains a written statement, signed under penalties of perjury by an interest holder in a partnership, trust, or estate that receives a distribution described in paragraph (b)(1) of this section from the corporation, which statement certifies that the interest holder is a qualified U.S. person (as defined in paragraph (b)(1)(i) of this section), no liability shall be imposed under paragraph (b)(1) of this section with respect to the distribution to the partnership, trust, or estate to the extent of the interest holder's interest in the partnership, trust, or estate, unless the distributing corporation knows or has reason to know that the statement is false, or it is subsequently determined that the interest holder, in fact, was not a qualified U.S. person at the time of the distribution. The written statement must set forth the amount of the interest holder's proportionate interest in the partnership, trust, or estate as determined under paragraph (b)(5)(i) of this section and must set forth the amount of such entity's proportionate interest in the distributing and controlled corporation, as well as the interest holder's name, taxpayer identification number, home address (in the case of an individual) or office address and place of incorporation (in the case of a corporation). The written statement must be retained by the distributing corporation with its books and records for a period of three calendar years following the close of the last calendar year in which the corporation relied upon the statement.

(6) *Anti-abuse rule.* If a domestic corporation is directly or indirectly formed or availed of by one or more foreign persons to hold the stock of a second domestic corporation for a principal purpose of avoiding the application of section 367(e)(1) and the requirements of this section, any distribution of stock or securities to which section 355 applies by such second domestic corporation shall be treated for Federal income tax purposes as a distribution to such foreign person or persons, followed by a transfer of the stock or securities to the first domestic corporation. The qualification of the distribution to the foreign person for an exception to the general gain recognition rule of paragraph (b)(1) of this section, and the consequences of the transfer to the first domestic corporation under this section, shall be determined in accordance with all of the facts and circumstances.

(c) *Nonrecognition of gain*—(1) *Distribution by a U.S. real property holding corporation of stock in a second U.S. real property holding corporation.* Gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation to a person who is not a qualified U.S. person (as defined in paragraph (b)(1)(i) of this section) if the conditions specified in paragraphs (c)(1) (i) and (ii) of this section are both satisfied:

(i) Immediately after the distribution, both the distributing and controlled corporations are U.S. real property holding corporations (as defined in section 897(c)(2)). For the treatment of the distribution under section 897, see section 897(e)(1) and the regulations thereunder.

(ii) The distributing corporation attaches to its timely filed Federal income tax return for the taxable year in which the distribution occurs a statement titled ''Section 367(e)(1)—Reporting of Section 355 Distribution by U.S. Real Property Holding Corporation'', signed under penalties of perjury by an officer of the corporation, disclosing the following information—

(A) A statement that the distribution is one to which paragraph (c)(1) of this section applies; and

(B) A description of the transaction in which one U.S. real property holding corporation distributes the stock of another U.S. real property holding corporation in a transaction that is described under section 355.

(iii) For purposes of this paragraph (c)(1), an income tax return (including an amended return) will be considered a timely filed Federal income tax return if it is filed prior to the time that the Internal Revenue Service discovers that the reporting requirements of this paragraph have not been satisfied.

(2) *Distribution by a publicly traded corporation—(i) Conditions for nonrecognition.* Except as provided by paragraph (c)(2)(ii) of this section, gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation to a person who is not a qualified U.S. person (as defined in paragraph (b)(1)(i) of this section) if both of the following conditions are satisfied:

(A) Stock of the domestic controlled corporation with a value of more than 80 percent of the outstanding stock of the corporation is distributed with respect to one or more classes of the outstanding stock of the distributing corporation that are regularly traded on an established securities market, as defined in § 1.897–1(m) (1) and (3), located in the United States. Stock is considered to be regularly traded if it is regularly quoted by brokers or dealers making a market in such interests. A broker or dealer is considered to make a market only if the broker or dealer holds himself out to buy or sell interests in the stock at the quoted price.

(B) The distributing corporation satisfies the reporting requirements contained in paragraph (c)(2)(iii) of this section.

(ii) *Recognition of gain if distributee owns 5 percent of distributing corporation.* If, at the time of the distribution, the distributing corporation knows or has reason to know that any distributee who is not a qualified U.S. person (as defined in paragraph (b)(1)(i) of this section) owns, directly, indirectly, or constructively (using the rules of sections 897(c)(3) and (c)(6)(C), but subject to the rules of paragraph (b)(5) of this section), more than 5 percent (by value) of a class of stock or securities of the distributing corporation with respect to which the stock or securities of the controlled corporation is distributed (a 5-percent shareholder), the distributing corporation will qualify for nonrecognition under paragraph (c)(2)(i) of this section if, with respect to such 5-percent shareholder, either—

(A) The distribution qualifies for nonrecognition under paragraph (c)(3) of this section; or

(B) The distributing corporation recognizes gain (but not loss) on the distribution under paragraph (b) of this section.

(iii) *Reporting Requirements.* To qualify for nonrecognition treatment under paragraph (c)(2)(i) of this section, the distributing corporation must attach to its timely filed Federal income tax return, for the taxable year in which the distribution occurs a statement titled ''Section 367(e)(1)—Reporting of Section 355 Distribution by U.S. Publicly Traded Corporation to Foreign Persons,'' signed under penalties of perjury by an officer of the corporation, disclosing the following information:

(A) A statement that the distribution is one to which paragraph (c)(2) of this section applies.

(B) A description of the transaction in which the distributing corporation that is publicly traded on a U.S. securities market distributed stock or securities of a domestic controlled corporation.

(C) The U.S. securities market on which the stock of the distributing corporation is publicly traded.

(D) A statement that, at the time of the distribution, either—

(*1*) The distributing corporation does not know or have reason to know that any distributee who is not a qualified U.S. shareholder (as defined in paragraph (b)(1)(i) of this section) is a 5-percent shareholder; or

(*2*) The distributing corporation knows or has reason to know that one or more distributees who are not qualified U.S. persons are 5-percent shareholders, and, that with respect to each such 5-percent shareholder, either—

(*i*) Gain will not be recognized because the requirements of paragraph (c)(3) of this section are satisfied; or

(*ii*) Gain (but not loss) will be recognized in accordance with paragraph (b) of this section.

(iv) *Timely filed return*. For purposes of this paragraph (c)(2), an income tax return (including an amended return) will be considered a timely filed Federal income tax return if it was received prior to the time that the Internal Revenue Service discovers that the reporting requirements of this paragraph (c)(2) have not been satisfied.

(v) *Relation to other nonrecognition provisions.* If the distribution of the stock and securities of the controlled corporation also qualifies for nonrecognition under paragraph (c)(1) of this section, the distributing corporation shall be entitled to nonrecognition under paragraph (c)(1) of this section and not this paragraph (c)(2).

(3) *Distribution of certain domestic stock to 10 or fewer qualified foreign distributees*—(i) *In general.* (A) Gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation with respect to a foreign distributee (defined in paragraph (c)(3)(i)(B) of this section) that is a qualified foreign distributee (defined in paragraph (c)(3)(i)(C) of this section), provided that each of the conditions contained in paragraph (c)(3)(ii) of this section is satisfied. If one or more foreign distributees are not treated as qualified foreign distributees, the distributing corporation shall recognize a percentage of the gain realized on the distribution, equal to the percentage of its stock owned immediately before the distribution, directly or indirectly, by foreign distributees who are not qualified foreign distributees. See paragraph (b)(5) of this section for rules regarding the ownership of stock held by a partnership, trust, or estate.

(B) For purposes of this paragraph (c)(3), the term *foreign distributee* is any person who is not a qualified U.S. person (as defined in paragraph (b)(1)(i) of this section) if such person—

(*1*) Owned stock or securities of the distributing corporation immediately prior to the distribution;

(*2*) Owned stock or securities of the distributing corporation within two years prior to the distribution and directly, indirectly, or constructively (using the rules of section 318) owns 50 percent or more of either the total voting power or the total value of the stock of the distributing or controlled corporation immediately after the distribution; or

(*3*) Is a transferee or substitute distributee, as defined in paragraph (c)(3)(vi) (C) or (D) of this section.

(C) For purposes of this section, except as provided by paragraph (c)(3)(i)(D) of this section, the term *qualified foreign distributee* is a foreign distributee that, during the entire period for which the agreement to recognize gain (described in paragraph (c)(3)(iii) of this section) is in effect with respect to the distributee, is either an individual or a corporation (as defined in section 7701(a)(3)), resident of a foreign country that maintains a comprehensive income tax treaty with the United States which contains an information exchange provision. However, no more than ten foreign distributees in total may be current or former qualified foreign distributees (including any transferee or substitute distributees as defined in paragraph (c)(3)(vi) (C) or (D) of this section) during the entire term of the gain recognition agreement. See, however, paragraph (c)(3)(vi)(G) of this section for special rules applicable to substitute distributees.

(D) Unless the distributing corporation obtains a ruling from the Internal Revenue Service to the contrary, no foreign distributee shall be treated as a qualified foreign distributee if it holds its interest in the distributing corporation through a partnership, trust or estate, characterized as such under the taxation laws of the United States or any entity that is treated as fiscally transparent under the taxation laws of the foreign country in which it is a resident if such country maintains a comprehensive income tax treaty with the United States which contains an information exchange provision.

(ii) *Conditions for nonrecognition.* A distribution of stock or securities described in paragraph (c)(3)(i) of this section to a qualified foreign distributee shall not result in the recognition of gain if each of the following conditions is satisfied:

(A) If more than ten foreign distributees, at any time during the entire term of the gain recognition agreement, are eligible to be qualified foreign distributees, the distributing corporation shall designate the foreign distributees to be considered qualified foreign distributees for which nonrecognition is claimed under this paragraph (c)(3).

(B) Immediately after the distribution and on each testing date beginning after the distribution and during the period that the agreement to recognize gain (described in paragraph (c)(3)(iii) of this section) is in effect, the value of the distributing corporation (that is, the fair market value of the assets of the distributing corporation, less all liabilities of the distributing corporation) must exceed the amount of gain that the distributing corporation realized, but did not recognize (on or after the distribution) under this paragraph (c)(3), as a consequence of the distribution with respect to qualified foreign distributees. This requirement will be deemed satisfied for any testing date upon which the adjusted basis of the distributing corporation's assets, less all liabilities of the distributing corporation, exceeds the amount of the deferred gain. A testing date is—

(*1*) The last day of any taxable year of the distributing corporation during which the agreement to recognize gain is in effect; and

(*2*) Any date upon which the distributing corporation distributes property to its shareholders under section 301(a).

(C) At all times until the close of the 120-month period following the end of the taxable year of the distributing corporation in which the distribution was made, except under the circumstances and subject to the consequences prescribed in paragraphs (c)(3) (vi) and (vii) of this section, all qualified foreign distributees must continue to own, directly or indirectly, all of the stock and securities of the distributing and controlled corporations that the qualified foreign distributee owned, directly or indirectly, immediately after the distribution (including any stock and securities of the distributing or controlled corporation later acquired from the distributing or controlled corporation for which the distributee has a holding period determined under section 1223 by reference to the stock or securities).

(D) The distribution of stock or securities described in paragraph (c)(3)(i) of this section must not be a distribution pursuant to which the distributing corporation goes out of existence.

(E) The distributing corporation must file an agreement to recognize gain, and the controlled corporation must agree to be secondarily liable in the event that the distributing corporation does not pay the tax due upon a recognition event described in paragraph (c)(3)(vii) of this section. The agreement is described in paragraph (c)(3)(iii) of this section and filed by the distributing corporation with its Federal income tax return for its taxable year in which the distribution is made.

(F) For each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 120-month period following the end of the taxable year of the distributing corporation in which the distribution was made, all qualified foreign distributees and the controlled corporation must provide to the distributing corporation the annual certifications described in paragraph (c)(3)(v) of this section, and the distributing corporation must file the certifications with its tax return.

(iii) *Agreement to recognize gain*. The agreement to recognize gain required by this paragraph (c)(3)(iii) shall be prepared by or on behalf of the distributing corporation and signed under penalties of perjury by an authorized officer of the distributing corporation. An authorized officer of the controlled corporation must also sign the agreement under penalties of perjury, agreeing to extend the statute of limitations and accept liability for the tax in the event that the distributing corporation fails to pay the tax upon a recognition event. The agreement provided by the distributing corporation shall set forth the following items, under the heading ''GAIN RECOGNITION AGREEMENT UNDER § 1.367(e)–1T(c)(3)(iii)'', with paragraphs labeled to correspond with such items:

(A) A declaration that the distribution is one to which paragraph (c)(3) of this section applies.

(B) A description of each qualified foreign distributee, which shall include the qualified foreign distributee's—

(*1*) Name;

(*2*) Address;

(*3*) Taxpayer identification number (if any); and

(*4*) Residence and citizenship (in the case of an individual) or place of incorporation and country of residence (in the case of a qualified foreign distributee that is a corporation for Federal income tax purposes under section 7701(a)(3)).

(C) A description of the stock and securities of the distributing and controlled corporations owned (directly or indirectly) by each qualified foreign distributee, including—

(*1*) The number or amount of shares;

(*2*) The type of stock or securities;

(*3*) The fair market values of the stock and securities of the controlled corporation owned (directly or indirectly) by the qualified foreign distributee(s), determined immediately before and immediately after the distribution;

(*4*) The distributing corporation's adjusted basis (immediately before the distribution) in the stock and securities of the controlled corporation distributed to the qualified foreign distributees;

(*5*) The fair market value of the distributing corporation (fair market value of its assets, less all liabilities of the distributing corporation) immediately after the distribution. Such amount must exceed the amount of gain that the distributing corporation realized, but did not recognize under this paragraph (c)(3), on the distribution to qualified foreign distributees. Alternatively, the fair market value standard will be deemed satisfied if the adjusted basis of the assets of the distributing corporation, less all liabilities of the distributing corporation, exceeds the amount of the deferred gain.

(*6*) For each applicable valuation, a summary of the method (including appraisals, if any) used for determining the fair market values required by this paragraph (c)(3)(iii).

(D) The distributing corporation's agreement to recognize gain in accordance with paragraph (c)(3)(vii) of this section.

(E) The controlled corporation's agreement to be secondarily liable for the distributing corporation's tax liability, pursuant to the gain recognition agreement described in this paragraph (c)(3)(iii).

(F) A waiver of the period of limitations by both the distributing and controlled corporation as described in paragraph (c)(3)(iv) of this section.

(G) An attached statement from each qualified foreign distributee declaring that the qualified foreign distributee will provide to the distributing corporation the annual certifications described in paragraph (c)(3)(v)(A) of this section for each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 120-month period following the taxable year of the distributing corporation in which the distribution was made. The attached statements shall be signed under penalties of perjury by an authorized officer in the case of any qualified foreign distributee that is a corporation for Federal income tax purposes or by the individual in the case of a qualified foreign distributee that is an individual.

(H) An attached statement from the controlled corporation declaring that it will provide to the distributing corporation the annual certifications described in paragraph (c)(3)(v)(B) of this section.

(I) An agreement by the distributing corporation to attach to its tax returns the annual certifications of the qualified foreign distributees and the controlled corporation described in paragraphs (c)(3)(v)(A) and (B) of this section, respectively, and to meet any other reporting requirement in accordance with paragraph (c)(3)(v) of this section.

(iv) *Waiver of period of limitation*. The distributing corporation and the controlled corporation must file, with the gain recognition agreement described in paragraph (c)(3)(iii) of this section, a waiver of the period of limitation on the assessment of tax upon the gain realized on the distribution to the qualified foreign distributee(s). The waiver shall be executed on Form 8838, substitute form, or such other form as may be prescribed by the Commissioner for this purpose and shall extend the period for assessment of such tax to a date not earlier than the close of the thirteenth full year following the taxable year that includes the distribution. A

properly executed Form 8838, substitute form, or such other form authorized by this paragraph (c)(3)(iv) shall be deemed to be consented to and signed by a Service Center Director or the Assistant Commissioner (International) for purposes of § 301.6501(c)–1(d) of this chapter.

(v) *Annual certifications and other reporting requirements.* For each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 120-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the distributing corporation must file with its Federal income tax return the annual certifications for that year described in this paragraph (c)(3)(v).

(A) Each current qualified foreign distributee must provide to the distributing corporation an annual certification, signed under penalties of perjury by an authorized officer of the qualified foreign distributee that is a corporation or by the qualified foreign distributee that is an individual (as the case may be). Each annual certification must identify the distribution with respect to which it is given by setting forth the date and a summary description of the distribution. In the annual certification, the qualified foreign distributee must declare that—

(*1*) The qualified foreign distributee continues to satisfy paragraph (c)(3)(i)(C) of this section; and

(*2*) The qualified foreign distributee continues to own, directly or indirectly, without interruption, the stock and securities of the distributing and controlled corporations (except to the extent the stock or securities have been disposed of in a transfer described in paragraph (c)(3)(vi) of this section).

(B) The controlled corporation must provide a certification to the distributing corporation, signed under penalties of perjury by an authorized officer of the corporation, that lists each current qualified foreign distributee holding (directly or indirectly) stock of the controlled corporation and its direct or indirect ownership interest in the controlled corporation at both the first day and the last day of the taxable year for which the distributing corporation files its Federal income tax return, and certifies the accuracy of that list.

(C) The distributing corporation must attach to the annual certifications described in paragraphs (c)(3)(v)(A) and (B) of this section, a statement signed under penalties of perjury by an authorized officer of the corporation, in which the corporation declares that, to the best of its knowledge, the annual certifications are true.

(D) The distributing corporation must also attach to the annual certifications a separate statement indicating—

(*1*) The names and addresses of each current and each former qualified foreign distributee;

(*2*) The percentage of direct or indirect ownership that the qualified foreign distributees retain in the distributing corporation at year-end; and

(*3*) A certification that the value of the distributing corporation (or the adjusted basis of its assets), less all of the liabilities of the distributing corporation on all testing dates, exceeded the amount of the gain deferred as of the testing date.

(vi) *Special rule for nonrecognition transactions.* (A) Gain shall not be recognized under paragraph (c)(3)(vii) of this section if the distributing or controlled corporation is acquired by a successor-in-interest (described in paragraph (c)(3)(vi)(B) of this section), or upon a direct or indirect disposition by a qualified foreign distributee of stock or securities of a distributing or controlled corporation (or a successor-in-interest) that is subject to a gain recognition agreement described in paragraph (c)(3)(iii) of this section, if the requirements of this paragraph (c)(3)(vi) are satisfied and the disposition consists of a transfer described in section 332, 337, 351, 354, 355, 356, or 361 that does not result in a substantial transformation (as defined in paragraph (c)(3)(vii)(B) of this section). For special rules regarding transfers described in section 355, see paragraph (c)(3)(vi)(G) of this section.

(B) For purposes of this section, the term *successor-in-interest* refers to any domestic corporation that acquires the assets of the distributing or controlled corporation in a transaction described in section 381(a) to which this paragraph (c)(3)(vi) applies.

(C) For purposes of this section, the term *transferee distributee* refers to:

(*1*) Any corporation whose stock or securities are exchanged for the stock or securities of the distributing or controlled corporation (or a successor-in-interest), or of another transferee distributee, in a transaction described in section 351, 354, or sections 361 and 381(a)(2), to which this paragraph (c)(3)(vi) applies.

(*2*) Any corporation that acquires the assets of any qualified foreign distributee, transferee distributee or substitute distributee in a transaction described in section 381(a).

(D) For purposes of this section, the term *substitute distributee* refers to any person that acquires the stock or securities of the distributing or controlled corporation (or a successor-in-interest), or of a qualified foreign distributee, in a section 355 distribution.

(E) Gain shall not be recognized under paragraph (c)(3)(vii) of this section in a transaction involving a transfer of the assets of the distributing or controlled corporation to a successor-in-interest, only if the following information and agreements are included with the first annual certification thereafter filed under paragraph (c)(3)(v) of this section:

(*1*) A description of the transaction (including a statement of applicable Internal Revenue Code provisions, and a description of stock or securities transferred, exchanged, or received in the transaction).

(*2*) A description of the successor-in-interest (including the name, address, taxpayer identification number, and place of incorporation of the successor in interest).

(*3*) An agreement of the successor-in-interest, signed under penalties of perjury by an authorized officer of the successor-in-interest corporation, to succeed to all of the responsibilities and duties of the distributing corporation or the controlled corporation (as the case may be) under this paragraph (c)(3) as if the successor-in-interest were the distributing or controlled corporation.

(F) Gain shall not be recognized under paragraph (c)(3)(vii) of this section in a transaction described in paragraph (c)(3)(vi)(A) of this section in which a qualified foreign distributee, directly or indirectly, disposes of, and a transferee distributee acquires, stock or securities of the distributing or controlled corporation (or a successor-in-interest), or another transferee distributee, only if the transferee distributee is either a qualified U.S. person or qualifies as a qualified foreign distributee under this paragraph (c)(3) and the following information and agreements are included with the first annual certification thereafter filed under paragraph (c)(3)(v) of this section:

(*1*) A description of the transaction (including a statement of applicable Internal Revenue Code provisions, and a description of the stock or securities of the distributing or controlled corporation (or a successor-in-interest) owned, directly or indirectly, by qualified foreign distributees immediately after the transaction).

(*2*) An agreement of the distributing corporation and the controlled corporation (amending the agreement described in paragraph (c)(3)(iii) of this section), signed under penalties of perjury by an authorized officer of the corporation, to recognize gain (in the

case of the distributing corporation) and to be secondarily liable (in the case of the controlled corporation) in accordance with the provisions of this paragraph (c)(3) upon the occurrence of a disposition, directly or indirectly, by the foreign transferee distributee of any stock or securities of the distributing or controlled corporation (or a successor-in-interest) (other than a disposition that itself satisfies the requirements of this paragraph (c)(3)(vi)).

(*3*) An agreement of each foreign transferee distributee, signed under penalties of perjury by the individual or an authorized officer of the corporation, to comply with all of the responsibilities, qualifications and duties of a qualified foreign distributee under this paragraph (c)(3), with respect to the stock or securities of the distributing or controlled corporation (or a successor-in-interest) owned, directly or indirectly, by the transferee distributee.

(G) Gain shall not be recognized under paragraph (c)(3)(vii) of this section in the case of a section 355 distribution by a qualified foreign distributee of stock or securities of the distributing or controlled corporation (or a successor-in-interest), or of another qualified foreign distributee. The qualified foreign distributee that distributed the stock or securities is no longer required to comply with the rules of this section applicable to qualified foreign distributees, provided such person no longer has any interest, directly or indirectly, in the distributing and controlled corporation. Thus, for example, such person is not counted as a qualified foreign distributee for purposes of limiting gain recognition to 10 or fewer foreign distributees. In order for this provision to apply, the substitute distributee must either be a qualified U.S. person or satisfy the requirements applicable to qualified foreign distributees contained in this paragraph (c)(3) and must include with the first annual certification thereafter filed under paragraph (c)(3)(v) of this section the following information and agreements:

(*1*) A description of the transaction (including a statement of applicable Internal Revenue Code sections, and a description of the stock or securities distributed in the transaction).

(*2*) An agreement of the distributing corporation and the controlled corporation (amending the agreement described in paragraph (c)(3)(iii) of this section), signed under penalties of perjury by an authorized officer of the corporation, to recognize gain (in the case of the distributing corporation) and to be secondarily liable (in the case of the controlled corporation) in accordance with the provisions of this paragraph (c)(3) upon the occurrence of a disposition, directly or indirectly, by a foreign substitute distributee of any stock or securities received by the substitute distributee in the transaction.

(*3*) An agreement of each foreign substitute distributee, signed under penalties of perjury by the individual or authorized officer of the corporation, to succeed to all of the responsibilities, qualifications and duties of a qualified foreign distributee under this paragraph (c)(3), with respect to the stock or securities of the distributing or controlled corporation (or a successor-in-interest) received by such substitute distributee.

(vii) *Recognition of gain*. (A) (*1*) The distributing corporation must file, within 90 days of a transaction described in this paragraph (c)(3)(vii)(A), an amended return for the year of the distribution and recognize gain realized but not recognized upon such distribution, if, prior to the close of the 120-month period following the end of the taxable year of the distributing corporation in which the distribution was made, either—

(*i*) A qualified foreign distributee sells (or otherwise disposes of) the stock or securities of the distributing or controlled corporation that the qualified foreign distributee owned (directly or indirectly) (other than pursuant to a transfer described in paragraph (c)(3)(vi) of this section); or

(*ii*) Any other transaction (e.g., a public offering or reorganization) results in a substantial transformation (as defined in paragraph (c)(3)(vii)(B) of this section) in either the distributing or controlled corporation (or both).

(*2*) For purposes of this paragraph (c)(3)(vii)(A), a disposition includes, but is not limited to, any disposition treated as a sale or exchange under this subtitle (e.g., section 301(c)(3)(A), 302(a), 351(b) or 356(a)(1)). For the computation of gain in the case of a sale (or similar disposition), see paragraph (c)(3)(vii)(C) of this section. For the computation of gain in the case of other transactions, see paragraphs (c)(3)(vii) (D) and (F) of this section. For special rules regarding substitute distributees, see paragraph (c)(3)(vii)(E) of this section.

(B) A transaction is treated as a substantial transformation if, as a result of such transaction, the qualified foreign distributees, transferee distributees and substitute distributees own, in the aggregate, less than 50 percent of either the total voting power or the total value of the stock of the distributing or the controlled corporation, directly or indirectly, that the qualified foreign distributees owned immediately after the distribution.

(C) In the case of a sale (or similar disposition), directly or indirectly, by a qualified foreign distributee of the stock or securities of the distributing or controlled corporation (or a successor-in-interest) that does not result in a substantial transformation, the distributing corporation shall be required to recognize a proportionate amount of the gain realized but not recognized under this paragraph (c)(3), equal to the percentage of stock of the distributing or controlled corporation, as the case may be, sold (or otherwise disposed of), directly or indirectly, by the qualified foreign distributee. However, if the sale (or other disposition) of stock or securities by a qualified foreign distributee results in a substantial transformation, the distributing corporation (or its successor-in-interest) must recognize the entire deferred gain that has not already been recognized under paragraph (c)(3)(vii) of this section.

(D) In the case of a nonrecognition transaction that results in a substantial transformation, the distributing corporation must recognize the entire deferred gain that has not already been recognized under paragraph (c)(3)(vii) of this section. If a nonrecognition transaction does not result in a substantial transformation, the distributing corporation does not recognize any gain provided that the requirements of paragraph (c)(3)(vi) of this section are satisfied.

(E) A sale (or other disposition), directly or indirectly, by a substitute distributee, of all or a portion of the stock or securities of the distributing or controlled corporation (or a successor-in-interest) that the substitute distributee received in the section 355 distribution shall be treated as a disposition of such stock or securities by a qualified foreign distributee (in accordance with paragraph (c)(3)(vii)(C) of this section) for purposes of computing gain under this paragraph (c)(3)(vii).

(F) Other transactions or events shall trigger gain under this paragraph (c)(3)(vii) as follows:

(*1*) If a qualified foreign distributee ceases to satisfy the requirements for a qualified foreign distributee contained in paragraph (c)(3)(i)(C) of this section (or any other specified requirements in paragraph (c)(3) of this section), the qualified foreign distributee shall be treated as if it sold all of the stock and securities that it owned, directly or indirectly, in the distributing and controlled corporation (or a successor-

in-interest), on the date that such person ceased to meet the requirements.

(*2*) If a substitute distributee ceases to satisfy the requirements for a qualified foreign distributee contained in paragraph (c)(3)(i)(C) of this section (or any other specified requirements in paragraph (c)(3) of this section), the substitute distributee shall be treated as if it sold all of the stock and securities of the distributing or controlled corporation (or a successor-in-interest) that it received in the distribution, on the date that it ceased to meet the requirements.

(*3*) If the distributing corporation (or a successor-in-interest) fails to satisfy the requirement contained in paragraph (c)(3)(ii)(B) of this section on any testing date during which the agreement to recognize gain is in effect, such failure will be treated as if a substantial transformation has occurred on such date.

(*4*) If either the distributing or controlled corporation (or a successor-in-interest) is acquired in a section 381(a) exchange and the acquirer is not a successor-in-interest that satisfies the requirements of paragraph (c)(3)(vi)(E), such acquisition will be treated as if a substantial transformation has occurred on the date of the acquisition.

(G) A qualified foreign distributee that sells (or otherwise disposes of) all of its interest, directly or indirectly, in the distributing and controlled corporation ceases thereafter to be a qualified foreign distributee. In addition, where one qualified foreign distributee owns all of the stock of another qualified foreign distributee, and both persons have identical direct or indirect interests in the distributing or controlled corporation, the direct or indirect sale (or other disposition) by one qualified foreign distributee of all of its interest in the distributing or controlled corporation (under paragraph (c)(3)(vii) of this section) will terminate the qualified foreign distributee status for the second qualified foreign distributee. The principles of this paragraph (c)(3)(vii) shall generally be applied so that any gain relating to the same stock of the distributing or controlled corporation by more than one person is not taxed more than once under this paragraph (c)(3)(vii). In any event, gain recognized pursuant to this paragraph (c)(3)(vii), on a cumulative basis, shall not exceed the amount of gain that the distributing corporation would have recognized under section 367(e)(1) if its initial distribution of the stock or securities of the controlled corporation was fully taxable under paragraph (b) of this section.

(H) If additional tax is required to be paid by the distributing corporation (or a successor-in-interest) for the year of the distribution, interest must be paid by the distributing corporation (or the controlled corporation if the distributing corporation fails to pay the tax due) on that amount at the rates determined under section 6621(a)(2) with respect to the period between the date that was prescribed for filing the distributing corporation's original income tax return for the year of the distribution and the date on which the additional tax for that year is paid.

(I) Net operating losses, capital losses, or credits against tax that were available in the year of the distribution and that are unused (whether or not they have expired since the distribution) at the time of gain recognition described in this paragraph (c)(3)(vii) may be applied (respectively) by the distributing corporation against any gain recognized or tax owed by reason of this provision, but no other adjustments shall be made with respect to any other items of income or deduction in the year of distribution or other years.

(viii) *Failure to comply.* (A) Except as otherwise provided in paragraph (c)(3)(viii)(B) of this section, if the distributing corporation or the controlled corporation fails to comply in any material respect with the requirements of this paragraph (c)(3) or with the terms of an agreement submitted pursuant hereto, or if the distributing corporation knows or has reason to know of any failure of another person to so comply, the distributing corporation shall treat the initial distribution of the stock or securities of the controlled corporation as a taxable exchange in the year of the distribution. In such event, the period for assessment of tax shall be extended until three years after the date on which the Internal Revenue Service receives actual notice of such failure to comply.

(B) If a person fails to comply in any material respect with the requirements of this paragraph or with the terms of an agreement submitted pursuant thereto, the provisions of paragraph (c)(3)(viii)(A) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect, provided that the person achieves compliance as soon as the person becomes aware of the failure. Whether a failure to materially comply was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(d) *Other consequences*—(1) *Exchange under section 897(e)(1).* With respect to the treatment under section 897(e)(1) of a foreign distributee on the receipt of stock or securities of a domestic or foreign corporation where the foreign distributee's interest in the distributing domestic corporation is a United States real property interest, see section 897(e)(1) and the regulations thereunder.

(2) *Dividend treatment under section 1248.* With respect to the treatment as a dividend of a portion of the gain recognized by the domestic corporation on the distribution of the stock of certain foreign corporations, see sections 1248(a) and (f) and the regulations thereunder.

(3) *Distribution of stock of a passive foreign investment company.* [Reserved]

(4) *Reporting under section 6038B.* Notice shall be required under section 6038B with respect to a distribution described in this section. See § 1.6038B–1T(e).

(e) *Examples.* The rules of paragraphs (b), (c), and (d) of this section are illustrated by the examples below. In all examples, assume that all foreign companies are treated as corporations for Federal income tax purposes and are not treated as fiscally transparent under the taxation laws of the relevant foreign country.

Example 1. (i) FC, a Country Z company, owns all of the outstanding stock of DC1, a domestic corporation. DC1 owns all of the outstanding stock of DC2, another domestic corporation. The fair market value of the DC1 stock is 300x, and FC has a 100x basis in the DC1 stock. The fair market value of the DC2 stock is 180x, and DC1 has a 80x basis in the DC2 stock. Neither DC1 nor DC2 is a U.S. real property holding corporation. Country Z does not maintain an income tax treaty with the United States.

(ii) In a transaction qualifying for nonrecognition under section 355, DC1 distributes all of the stock of DC2 to FC. After the distribution, the DC1 stock has a fair market value of 120x.

(iii) Under paragraphs (b) (1) and (2) of this section, DC1 recognizes gain of 100x, which is the difference between the fair market value (180x) and the adjusted basis (80x) of the stock distributed. Under paragraph (d)(1) of this section and section 358, FC takes a basis of 40x in the DC1 stock, and a basis of 60x in the DC2 stock.

Example 2. (i) C, a citizen and resident of Country F, owns all of the stock of DC1, a domestic corporation. DC1, in turn, owns all of the stock of DC2, also a domestic corporation. The fair market value of the DC1 stock is 500x, and C has a 100x basis in the DC1 stock. The DC2 stock has a fair market value of 200x, and DC1 has a 180x basis in the DC2 stock.

(ii) In a transaction qualifying for nonrecognition under section 355, DC1 distributes to C all of the stock of DC2. DC1 and DC2 are U.S. real property holding corporations immediately after the distribution. After the distribution, the DC1 stock has a fair market value of 300x.

(iii) Under paragraph (c)(1) of this section, provided that DC1 complies with the reporting requirements contained in paragraph (c)(1)(ii) of this section, DC1 does not recognize gain on the distribution of the DC2 stock because DC1 and DC2 are U.S. real property holding corporations immediately after the distribution.

(iv) Under section 897(e) and the regulations thereunder, C is considered to have exchanged DC1 stock with a fair market value of 200x and an adjusted basis of 40x for DC2 stock with a fair market value of 200x. Because DC2 is a U.S. real property holding corporation, and its stock is a U.S. real property interest, C does not recognize any gain under section 897(e) on the distribution. C takes a basis of 40x in the DC2 stock, and its basis in the DC1 stock is reduced to 60x pursuant to section 358.

Example 3. (i) All of the outstanding common stock of DC, a domestic corporation that is not a U.S. real property holding corporation, is regularly traded on an established securities market located in the United States. None of the foreign shareholders of DC (directly, indirectly, or constructively) owns more than five percent of the common stock of DC. DC owns all of the stock of DS, a domestic corporation. The stock of DS has appreciated in the hands of DC.

(ii) In a transaction qualifying for nonrecognition under section 355, DC distributes all of the stock of DS to the common shareholders of DC.

(iii) Under paragraph (c)(2) of this section, DC does not recognize gain on the distribution of the DS stock to any foreign distributee, provided that DC complies with the reporting requirements contained in paragraph (c)(2)(iii) of this section. Each shareholder's basis in the DC and DS stock is determined pursuant to section 358.

Example 4. (i) FC, a company resident in Country X, owns all of the stock of DC1, a domestic corporation. DC1, in turn, owns all of the stock of DC2, a domestic corporation. The fair market value of the DC1 stock is 1,000x, and FC has a basis in the DC1 stock of 800x. The DC2 stock has a fair market value of 500x at the time of the distribution, and DC1 has a 100x basis in the DC2 stock. Neither DC1 nor DC2 is a U.S. real property holding corporation. Country X maintains an income tax treaty with the United States that includes an information exchange provision.

(ii) In a transaction qualifying for nonrecognition under section 355, DC1 distributes to FC all of the stock of DC2. Immediately after the distribution, the DC1 stock has a fair market value of 500x. Thus, the value of DC1 exceeds 400x, the amount of the deferred gain on the distribution.

(iii) Under paragraph (c)(3) of this section, DC1 will not recognize gain on the distribution of the DC2 stock to (foreign distributee) FC if FC is a qualified foreign distributee (as described in paragraph (c)(3)(i)(C) of this section) and DC1 enters into a gain recognition agreement (in which DC2 agrees to be secondarily liable), as described in paragraph (c)(3)(iii) of this section, and DC1, DC2 and FC otherwise comply with all of the provisions of paragraph (c)(3) of this section. Pursuant to section 358, FC will take a 400x basis in the DC2 stock and FC's basis in the DC1 stock will be reduced to 400x.

Example 5. (i) Assume the same facts as in *Example 4.* In addition, two years after DC1's distribution of DC2 stock to FC, FC sells 25 percent of the DC2 stock to Y, an unrelated corporation. One year later, FC sells an additional 30 percent of its DC2 stock to Z, another unrelated corporation.

(ii) Under paragraph (c)(3)(vii) of this section, upon FC's sale of 25 percent of its DC2 stock, DC1 is required to file an amended return for the year in which the DC2 stock was distributed to FC, and recognize 100x of gain, which represents 25 percent of the gain realized but not recognized on the distribution.

(iii) Upon FC's second sale of 30 percent of its DC1 stock, DC1 is required to file another amended return for the year of the distribution and recognize the balance of the deferred gain, or 300x, because such sale results in a substantial transformation (within the meaning of paragraph (c)(3)(vii)(B) of this section).

Example 6. (i) Assume the same facts as in *Example 5,* except that FC did not sell an additional 30 percent of its DC2 stock. Instead, DC2 issued additional stock in a public offering that reduced FC's interest in DC2 to less than 50 percent.

(ii) The public offering caused a substantial transformation because, as a result of the public offering, the interest of FC in DC2 was reduced to less than 50 percent of the amount of stock that FC owned in DC2 immediately after the distribution. Thus, the result is the same as in *Example 5.*

Example 7. (i) Assume the same facts as in *Example 4* In addition, one year after DC1's distribution of DC2 stock to FC, FC transfers all of the DC2 stock to FS, a company resident in Country X, in exchange for all of the FS stock, in a transaction described in section 351.

(ii) FS is described as a transferee distributee under paragraph (c)(3)(vi)(C) of this section. The transfer by FC of DC2 stock to FS is a nonrecognition transaction under paragraph (c)(3)(vi) of this section provided all of the requirements in paragraph (c)(3)(vi)(F) of this section are satisfied. (FS is counted, together with FC, for purposes of limiting nonrecognition treatment to up to ten qualified foreign distributees during the time that the gain recognition agreement is in effect.) DC1 will not recognize gain under the gain recognition agreement upon FC's transfer of the stock of DC2 to FS if DC1 enters into a new agreement, agreeing to recognize gain if FS sells DC2 stock, and the provisions of paragraph (c)(3)(vi) of this section are satisfied. A sale by FC of FS stock would be treated as a recognition event under paragraph (c)(3)(vii) because such sale would constitute an indirect disposition by FC of the DC2 stock.

Example 8. (i) P1, an entity treated as a partnership for Federal income tax purposes, owns all of the outstanding stock of DC1, a domestic corporation. DC1 owns all of the outstanding stock of DC2, another domestic corporation. The fair market value of the DC1 stock is 900x and P1 has an 900x basis in the DC1 stock. The fair market value of the DC2 stock is 600x and DC1 has a 400x basis in the DC2 stock. Neither DC1 nor DC2 is a U.S. real property holding corporation.

(ii) FC, a company resident in country X, and USP, a U.S. corporation, are the sole partners of P1. Under the rules and principles of sections 701 through 761, FC is entitled to a 60 percent, and USP is entitled to a 40 percent, distributive share of each item of P1 income and loss. Country X maintains an income tax treaty with the United States that includes an information exchange provision.

(iii) In a distribution qualifying for nonrecognition under section 355, DC1 distributes all of the stock of DC2 to P1. Paragraph (b)(5)(i) of this section provides that stock owned by a partnership is considered to be owned proportionately by its partners. Under paragraph (b)(5)(ii) of this section, if USP certifies to DC1 that it is a qualified U.S. person (and DC1 does not know or have reason to know that the certification is false), no Federal income tax shall be imposed with respect to the distribution by DC1 of DC2 to P1, to the extent of USP's 40 percent interest in P1.

(iv) Paragraph (c)(3)(i)(D) of this section provides that no foreign distributee may be treated as a qualified foreign distributee with respect to stock of the distributing corporation owned through a partnership, unless the distributing corporation receives a ruling from the Internal Revenue Service to the contrary. Thus, DC1 may not avoid recognition of the remaining 60 percent of the realized gain (relating to the interest of P1 owned by FC) by entering into a gain recognition agreement pursuant to paragraph (c)(3) of this section, unless DC1 obtains a ruling to the contrary.

Example 9. (i) DC1, a domestic corporation, owns all of the stock of DC2, also a domestic corporation. The stock of DC1 is owned equally by three shareholders: A, a domestic corporation, B, a U.S. citizen, and FB, a Country Y company.

(ii) A short time before DC1 adopted a plan to distribute the stock of DC2 to its shareholders, but after the board of directors of DC1 began contemplating the distribution, FB formed Newco, a domestic corporation, and contributed its DC1 stock to Newco in a transaction qualifying for nonrecognition under section 351. A valid business purpose existed for FB's transfer of the DC1 stock to Newco, but this purpose would have been fulfilled irrespective of whether FB transferred the DC1 stock to Newco before the distribution of DC2, or after the distribution of DC2 (in which case FB would have transferred the stock of DC1 and DC2 to Newco).

(iii) Pursuant to paragraph (b)(6) of this section, the District Director may determine that FB formed Newco for a principal purpose of avoiding section 367(e)(1). In such case, for Federal income tax purposes, FB will be treated as having received the stock of DC2 in a section 355 distribution, and then as having transferred the stock to Newco in a section 351 transaction.

(iv) If B was not a shareholder of DC1 so that A and FB were equal (50 percent) shareholders, FB would be treated as a foreign distributee within the meaning of

paragraph (c)(3)(i)(B) of this section without the application of paragraph (b)(6) of this section. In such case, DC1 would recognize 50 percent of the gain realized on the distribution of the DC2 stock, unless FB was a qualified foreign distributee within the meaning of paragraph (c)(3)(i) of this section and the conditions under paragraph (c)(3)(ii) of this section were satisfied.

Example 10. (i) DC1, a domestic corporation, owns all of the stock of DC2, also a domestic corporation. The stock of DC1 is owned by FP, a company resident in Country X. Country X maintains in income tax treaty with the United States that includes an information exchange provision. The DC2 stock has a fair market value of 500x at the time of the distribution, and DC1 has a basis of 100x in the DC2 stock. The stock of DC1 has a value of 500x (excluding DC1's investment in DC2). Neither DC1 nor DC2 is a U.S. real property holding corporation.

(ii) FP forms a holding company resident in Country X, Newco, and transfers 50 percent of its DC1 stock to Newco in an exchange described in section 351. Immediately after those transactions, DC1 distributes all of its DC2 stock to FP in exchange for FP's stock of DC1 in a transaction described in section 355. Thus, after the non pro rata distribution, FP owns all of the stock of DC2, and FP also owns all of the stock of Newco, which, in turn, owns all of the stock of DC1.

(iii) Newco and FP are foreign distributees (under paragraph (c)(3)(i)(B)(*1*) of this section) because they owned stock of DC1 immediately prior to the distribution. Assuming that all of the requirements of the gain recognition agreement exception under paragraph (c)(3) of this section are satisfied (so that both FP and Newco are qualified foreign distributees under paragraph (c)(3)(i)(C) of this section), DC1 will not be immediately taxable on the 400x gain realized on the distribution of the stock of DC2. Gain will be triggered under the gain recognition agreement under paragraph (c)(3)(vii) of this section if FP sells stock of Newco (because such sale would be an indirect disposition by FP of the stock of DC1), if Newco sells stock of DC1, or if FP sells stock of DC2.

Example 11. (i) Assume the same facts as in *Example 10*, except that Newco is a company resident of Country Z, and Country Z does not maintain an income tax treaty with the United States that includes an information exchange provision.

(ii) DC1 may still enter into a gain recognition agreement under paragraph (c)(3) of this section. Both FP and Newco are foreign distributees, but Newco is not a qualified foreign distributee. Thus, DC1 must recognize 50 percent, or 200x, of the 400x deferred gain on the distribution of DC2 stock. Such (50 percent) portion equals the percentage of the DC1 stock owned by foreign distributees that are not qualified foreign distributees (the 50 percent of the stock owned by Newco). DC1 may defer 50 percent of the gain, with respect to the portion of its stock owned by FP, a qualified foreign distributee, provided that it meets the requirements of paragraph (c)(3) of this section.

Example 12. (i) FC, a company resident in Country X, owns all of the stock of DC1, a domestic corporation (and has owned DC1 for many years). Country X maintains an income tax treaty with the United States that includes an information exchange provision. DC1, in turn, owns all of the stock of DC2, a domestic corporation. DC1 has a basis of 200x in the DC2 stock, and the DC2 stock has a value of 500x. Immediately after the distribution of DC2 described below, DC1 has a value of more than 300x.

(ii) DC1 distributes all of the stock of DC2 to FC (a qualified foreign distributee) in a transaction described under section 355, and satisfies all of the requirements of paragraph (c)(3) of this section to qualify for an exception to the general rule of taxation under section 367(e)(1). Two years after the initial distribution, FC distributes all of the stock of DC2 to its sole shareholder, FP, a resident of Country X, in a transaction described under section 355.

(iii) Under paragraph (c)(3)(vi)(D) of this section, FP is a substitute distributee with respect to the DC2 stock. Provided that the requirements of paragraph (c)(3)(vi)(G) of this section are satisfied, FP replaces FC as a qualified foreign distributee with respect to the DC2 stock (although FC is still a qualified foreign distributee with respect to the DC1 stock). FC is no longer required to maintain an interest in DC2 for purposes of determining whether a substantial transformation occurs. Thus, a sale by FP of the stock of FC would not trigger gain under paragraph (c)(3)(vii) of this section.

Example 13. (i) DC1, a domestic corporation, owns all of the stock of DC2, also a domestic corporation. The stock of DC1 is owned by two shareholders: FP and FX. FP, a company resident in Country Z, owns 25 percent of the stock of DC1. FX, a company resident in Country X, owns 75 percent of the stock of DC1. Country X maintains an income tax treaty with the United States that includes an information exchange provision; Country Z does not. The fair market value of DC2 is 500x and DC1 has a basis of 100x in the DC2 stock. Immediately after the distribution described below, DC1 has a value in excess of 400x.

(ii) FP formed FS, a company resident in Country X, and transferred its 25 percent interest in DC1 to FS in exchange for all of the stock of FS in an exchange described in section 351. Within two years of the exchange, DC1 distributed all of the stock of DC2 to its shareholders.

(iii) Under paragraph (c)(3) of this section, DC1 may defer a portion of its gain realized on the distribution of DC2. DC1 must immediately recognize 25 percent of the realized gain, or 100x, because FP, a 25 percent (indirect) shareholder is a foreign distributee (within the meaning of paragraph (c)(3)(i)(B) of this section), but may not be treated as a qualified foreign distributee (within the meaning of paragraph (c)(3)(i)(C) of this section). DC1 may defer 75 percent of its realized gain if FX is a qualified foreign distributee and DC1 enters into a gain recognition agreement (in which DC2 agrees to be secondarily liable), and the provisions of paragraph (c)(3) of this section are otherwise met. DC1 need not include FS as a qualified foreign distributee because FP and FS had identical 25 percent ownership interests in DC1, and DC1 is taxable with respect to such 25 percent interest. Thus, under paragraph (c)(3)(vii)(G) of this section, a sale by FS of its DC1 or DC2 stock will not result in an additional trigger of the gain recognition agreement under paragraph (c)(3)(vii) of this section.

(iv) If FP was instead a resident of Country X, DC1 could defer its entire realized gain if both FP and FS were qualified foreign distributees. In such case, DC1 would have three qualified foreign distributees. (DC1 is limited to ten qualified foreign distributees, including transferee and substitute distributees during the term of the gain recognition agreement.) If FS sold its entire interest in either DC1 or DC2, DC1 would be required to amend its Federal income tax return for the year of the transfer and include 100x in income. In such case, neither FP nor FS would be considered a qualified foreign distributee immediately after the sale (and, as a result, FP's sale of its FS stock would not trigger additional gain under paragraph (c)(3)(vii)(G) of this section). The result would be the same if FP sold all of the stock of FS (as such sale is an indirect disposition by FP of all its stock of DC1 and DC2). (In such case, the sale by FS of its stock of DC1 or DC2 would not trigger additional gain under paragraph (c)(3)(vii)(G) of this section.)

(f) *Effective date.* This section shall be effective with respect to distributions occurring on or after September 13, 1996. However, taxpayers may elect to apply the rules of this section with respect to distributions occurring on or after December 31, 1995.

Par. 4. Section 1.6038B–1T is amended by revising the second sentence of paragraph (b)(2)(i) and adding the text of paragraph (e) to read as follows:

§ 1.6038B–1T Reporting of transfers described in section 367 (temporary).

* * * * *

(b) * * *

(2) * * * (i) * * * For special reporting rules applicable to transfers described under section 367(e)(1), see paragraph (e) of this section; no reporting is required for transfers described in section 367(e)(2). * * *

* * * * *

(e) * * * (1) *In general.* If a domestic corporation (distributing corporation) makes a distribution described in section 367(e)(1), the distributing corporation must comply with the reporting requirements under this paragraph (e)(1). Form 926 and other requirements described in this section need not be met by the distributing corporation in the case of a distribution described in section 367(e)(1).

(2) *Reporting requirements if transaction is taxable under section 367(e)(1).* If the distribution is taxable to the distributing corporation under

section 367(e)(1) and the regulations thereunder, the distributing corporation must attach to its Federal income tax return for the taxable year that includes the date of the transfer a statement titled ''Section 367(e)(1) Reporting—Compliance With Section 6038B'', signed under penalties of perjury by an officer of the corporation, disclosing the following information:

(i) A description of the transaction in which the U.S. distributing corporation distributed stock or securities of a controlled corporation (whether domestic or foreign) to one or more foreign distributees.

(ii) The basis and fair market value of the stock and securities that were distributed by the distributing corporation in the transaction.

(3) *Reporting requirements if transaction qualifies for an exception to section 367(e)(1).* If the distributing corporation qualifies for an exception under § 1.367(e)–1T(c)(1), the requirements of section 6038B are satisfied if the distributing corporation complies with the reporting requirements contained in § 1.367(e)–1T(c)(1)(ii). If the distributing corporation qualifies for an exception under § 1.367(e)–1T(c)(2), the requirements of section 6038B are satisfied if the distributing corporation complies with the reporting requirements contained in § 1.367(e)–1T(c)(2)(iii). If the distributing corporation qualifies for an exception under § 1.367(e)–1T(c)(3), the requirements of section 6038B are satisfied if the distributing corporation complies with the reporting requirements contained in § 1.367(e)–1T(c)(3).

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PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority for citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. In § 602.101, paragraph (c) is amended by removing the entry for ''1.367(e)-1'' and adding an entry in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.367(e)–1T	1545–1487
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:
Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 96–20663 Filed 8–09–96; 12:19 pm]

BILLING CODE 4830–01–U

26 CFR Part 301

[TD 8681]

RIN 1545–AT22

Time for Performance of Acts Where Last Day Falls on Saturday, Sunday, or Legal Holiday

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the time for performance of acts by taxpayers and by the Commissioner, a district director, or the director of a regional service center, when the last day for performance falls on a Saturday, Sunday, or legal holiday. In particular, these regulations replace the list of legal holidays with a citation to the District of Columbia law that is the source of the list.

EFFECTIVE DATE: These regulations are effective August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Judith A. Lintz (202) 622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1995, the IRS published in the Federal Register (60 FR 49356) a notice of proposed rulemaking (IA–36–91 [1995–2 C.B. 470]) relating to the time for performance of acts when the last day for performance falls on a Saturday, Sunday, or legal holiday. When the last day for performance of an act by a taxpayer or an employee or administrator of the IRS falls on a Saturday, Sunday, or legal holiday, section 7503 of the Internal Revenue Code (Code) extends the time for performing the act. Under the extension, the act must be performed by the next day that is not a Saturday, Sunday, or legal holiday. The current regulations explain and supplement section 7503. This document contains final regulations that simplify and update the current regulations. In particular, the final regulations replace the list of holidays, which are determined by reference to the law in the District of Columbia, with a citation to that law.

The IRS received oral and written comments on the notice of proposed rulemaking. No public hearing was held or requested. After consideration of the comments, which are addressed below, the proposed regulations under section 7503 are adopted as published in the notice.

Explanation of Provisions and Summary of Comments

In response to the notice of proposed rulemaking for the regulations under section 7503, three categories of comments were received. First, there was some concern that replacing the list of legal holidays with a citation to the law in the District of Columbia would mean the list of holidays would no longer be accessible. It was suggested that the IRS annually publish the holidays by announcement or some other method. The final regulations do not retain the list of holidays because such a list requires regulatory revision whenever a change in the law occurs with respect to the holidays. However, a tax calendar that lists the legal holidays is annually made available through IRS Publication 509. This free publication can be obtained by calling the toll free telephone number 1–800–TAX-FORM (1–800–829–3676), or by contacting an IRS Forms Distribution Center.

Second, it was requested that the IRS address the impact of a federal government shutdown on the time for performance of acts when the last day for performance is a day when the government is closed. Section 7503 of the Code is limited to extending the time for performance of acts when the last day for performance falls on a Saturday, Sunday, or legal holiday. Therefore, the regulations for section 7503 are not appropriate for clarifying the effect of a federal government shutdown on the time allowed for performance of an act.

Third and last, it was requested that the regulations outline the kinds of acts to which the extension of time provided under section 7503 applies. The final regulations do not include this information. The purpose of the current regulatory project is to replace the list of holidays and revise other outdated material in the regulations. Outlining the kinds of acts to which section 7503 applies is not within the scope of the current project.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Judith A. Lintz, Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7503–1 is amended as follows:

1. In the fourth sentence of paragraph (a), the language ''Thursday, November 22, 1956 (Thanksgiving Day), the suit will be timely if filed on Friday, November 23, 1956, in the Court of Claims'' is removed and the language ''Thursday, November 23, 1995 (Thanksgiving Day), the suit will be timely if filed on Friday, November 24, 1995, in the Court of Federal Claims'' is added in its place.

2. Paragraph (b) is revised as set forth below.

3. Paragraph (c) is removed. The revision reads as follows:

§ 301.7503–1 Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

* * * * *

(b) *Legal holidays.* For the purpose of section 7503, the term *legal holiday* includes the legal holidays in the District of Columbia as found in D.C. Code Ann. 28–2701. In the case of any return, statement, or other document required to be filed, or any other act required under the authority of the internal revenue laws to be performed, at an office of the Internal Revenue Service, or any other office or agency of the United States, located outside the District of Columbia but within an internal revenue district, the term *legal holiday* includes, in addition to the legal holidays in the District of Columbia, any statewide legal holiday of the state where the act is required to be performed. If the act is performed in accordance with law at an office of the Internal Revenue Service or any other office or agency of the United States located in a territory or possession of the United States, the term *legal holiday* includes, in addition to the legal holidays in the District of Columbia, any legal holiday that is recognized throughout the territory or possession in which the office is located.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 20, 1996.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–20625 Filed 8–13–96; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7646]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special

flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

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

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York:				
Bolton, town of, Warren County	360869	July 23, 1975, Emerg.; July 3, 1996, Reg.; August 16, 1996, Susp.	August 16, 1996	August 16, 1996.
Lake George, town of, Warren County ...	360876	August 7, 1978, Emerg.; April 30, 1986, Reg.; August 16, 1996, Susp.	.....do	Do.
Queensbury, town of, Warren County	360879	September 8, 1975, Emerg.; July 16, 1984, Reg.; August 16, 1996, Susp.	.....do	Do.
Region V				
Illinois: Central, city of , Marion and Clinton Counties.	170453	July 2, 1975, Emerg.; December 19, 1984, Reg.; August 16, 1996, Susp.	.....do	Do.
Indiana: Seymour, city of, Jackson County ...	180099	April 3, 1975, Emerg.; November 2, 1983, August 16, 1996, Susp.	.....do	Do.
Michigan:				
Coldwater, city of, Branch County	260813	February 10, 1989, Emerg.; August 16, 1996, Reg.; August 16, 1996, Susp.	.....do	Do.
Coldwater, township of, Branch County	260826	September 26, 1989, Emerg.; August 16, 1996, Reg.; August 16, 1996, Susp.	.....do	Do.
Wisconsin: Dunn County, unincorporated areas.	550118	March 26, 1971, Emerg.; October 15, 1981, Reg.; August 16, 1996, Susp.	.....do	Do.
Region VII				
Missouri: Howard County, unincorporated areas.	290162	July 25, 1984, Emerg.; January 5, 1989, Reg.; August 16, 1996, Susp.	.....do	Do.
Region X				
Washington:				
Ferry County, unincorporated areas	530041	August 7, 1975, Emerg.; April 17, 1985, Reg.; August 16, 1996 Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Stevens County, unincorporated areas	530185	July 24, 1975, Emerg.; September 14, 1990, Reg.; August 16, 1996 Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

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

Issued: July 31, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–20720 Filed 8–13–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 87–124; FCC 96–285]

Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action requires that all wireline telephones in the workplace, confined settings (*e.g.*, hospitals, nursing homes) and hotels and motels eventually be hearing aid compatible and have volume control. As of April 1, 1997, hearing aid compatible telephones manufactured or imported for use in the United States must have the letters ''HAC'' permanently affixed to them, and, as of November 1, 1998, have volume control. The intent of these requirements is to increase access to telephone service by persons with impaired hearing.

EFFECTIVE DATE: October 23, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Greg Lipscomb, Attorney, 202/418–2340, Fax 202/418–2345, TTY 202/418–0484, glipscom@fcc.gov, Network Services Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Report and Order (R&O) in the matter of Access to Telecommunications Equipment and Services by Persons With Disabilities, (CC Docket 87–124, adopted June 27, 1996, and released July 3, 1996. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M Street, N.W., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 2100 M Street, NW., Suite 240, Washington, DC 20037, phone 202/857–3800.

Paperwork Reduction Act

Public reporting burden for the collections of information is estimated as follows:

Rule sections	Hours per response	Annual responses	Total burden
68.112(b)(3)(E)	2	805,000	1,610,000
68.224(a)	11.36	1,100	12,500
68.300(c)	11.36	1,100	12,500
Total Annual Burden: 1,635,000			

Frequency of Response: On occasion.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of the collections of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060–0687), Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0687). Washington, DC 20503.

Analysis of Proceeding: In 1992, the Commission adopted rules implementing the Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610 (HAC Act). In 1993, the Commission suspended portions of the 1992 rules because petitions filed by establishments affected by the regulations stated that the establishments were encountering serious difficulties in their attempts to comply. (*Order*, 8 FCC Rcd 4958 (1993), 58 FR 26692 (May 5, 1993)). On March 27, 1995, the Commission announced that an advisory committee, the Hearing Aid Compatibility Negotiated Rulemaking Committee (Committee), would consider whether the rule suspension should be lifted and whether new rules should be proposed. (*See* 59 FR 60343 (Nov. 23, 1994); 58 FR 1539 (March 27, 1995); and 60 FR 27945 (May 26, 1995)). The Committee represented the views and interests of all interested parties, including those of the Commission, telephone equipment manufacturers, employers, hospitals, nursing homes, hotels and motels, and persons with disabilities. The Committee's recommendations, adopted by unanimous consent, were filed with the Commission in the Committee's Final Report of August, 1995. On November 28, 1995, the Commission adopted and released a Notice of Proposed Rulemaking (*Notice of Proposed Rulemaking*, 11 FCC Rcd 4338 (1995) (NPRM)) that reflected the recommendations of the Committee (*See* 60 FR 63667 (December 12, 1995); 61 FR 1887 (January 24, 1996)). On June 27, 1996, the Commission adopted a R&O (FCC 96–285), which was released on July 3, 1996.

The R&O requires that wireline telephones in (1) the non-common areas of the workplace; (2) the patient and residential rooms of confined settings, such as hospitals and nursing homes; and (3) the guest rooms of hotels and motels eventually be hearing aid

compatible, as defined at 47 CFR Section 68.316 (electro-magnetic coil compatibility). The R&O also requires that, as of November 1, 1998, all replacement telephones and all newly purchased telephones be equipped with volume control, in addition to having electro-magnetic coil hearing aid-compatibility. The R&O also requires that, as of November 1, 1998, all telephones manufactured or imported for use in the United States have a volume control feature. The R&O includes a technical specification for volume control. The R&O modifies our rules governing telephone equipment labeling, and requires that, as of April 1, 1997, all telephones manufactured or imported for use in the United States that are hearing aid compatible have the letters ''HAC'' permanently affixed to them. The R&O implements additional recommendations of the Committee regarding consumer education. Finally, the R&O adopts other amendments to existing hearing aid compatibility rules for the purpose of clarification.

The new rules require no testing or retrofitting of existing workplace telephones. Instead, the rules set deadlines that are beyond the normal life-cycle times for the telephones to be replaced in these establishments. The rules also require volume control for newly acquired and replacement telephones in these establishments, but replacement or retrofitting for volume control are not required, and existing inventories of telephones are not be affected by the volume control requirement. The new rules will increase access by persons with hearing disabilities to telephones provided for emergency use and are necessary to implement the Hearing Aid Compatibility Act of 1988.

Under the rules, most workplace telephones will be required to be hearing aid compatible by January 1, 2000. In harmony with the provisions of the Americans With Disabilities Act of 1990, establishments with fewer than fifteen employees will be exempt from these requirements. After the applicable date for having hearing aid compatible telephones, employers can presume that their telephones are hearing aid compatible. Any person legitimately on the premises can challenge this presumption with a good faith request for a hearing aid compatible telephone. Upon receipt of such a request, the employer will have fifteen working days to replace any particular telephone that turns out not to be hearing aid compatible.

For confined settings, the new rules require that establishments with fifty or more beds make their telephones hearing aid compatible by November 1, 1997, while those with fewer than fifty beds would have to comply by November 1, 1998. Telephones in all confined setting establishments would be exempt if alternate signalling devices were available, monitored and working, or if a resident brought in and maintained his or her own telephone equipment.

The rules require that hotels and motels with eighty or more guest rooms to provide hearing aid compatible telephones by November 1, 1998, while those with fewer than eighty guest rooms have until November 1, 1999 to do so. As of April 1, 1997, generally twenty percent of guest rooms must have telephones that are hearing aid compatible.

The rules do not address wireless telephone hearing aid compatible issues, because those are being addressed by the Commission's Wireless Telecommunications Bureau.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 601, *et seq.*, the Commission's final analysis in this R&O is as follows:

1. Final Regulatory Analysis: As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comments on the proposals in the NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this R&O is as follows:

a. Need for, and objectives of, this action. This R&O amends the Commission's rules to require that eventually all wireline telephones in workplaces, confined settings and hotels and motels be hearing aid compatible and have volume control. The R&O also requires that as of November 1, 1998 all wireline telephones manufactured or imported for use in the United States must have volume control. These actions are needed to provide greater access to the telephone network by persons with hearing disabilities, pursuant to the requirements of the Hearing Aid Compatibility Act of 1988 (HAC Act). The HAC Act directs the Commission to take affirmative and specific steps to increase such access. The objectives of these rules are to provide the needed greater access, while at the same time balancing the needs of establishments that must provide the hearing aid compatible and volume control telephones.

b. Summary of significant issues raised by the public comments in response to the initial regulatory flexibility analysis. There were no comments submitted in direct response to the Regulatory Flexibility Analysis in the NPRM. In general comments on the NPRM, however, a number of commenters raised issues that might affect small entities. Several commenters stated that the Commission's proposed rules would duplicate the provisions of the Americans With Disabilities Act of 1990 (ADA), or exceed the Commission's authority under the HAC Act, thus unnecessarily burdening establishments. A number of hotel and motel owners said the costs to replace telephones would be burdensome. One manufacturer said the volume control manufacturing requirement could cost ''millions of dollars'' in start-up costs. An association of manufacturers stated that the proposed one-year phase-in of the volume control manufacturing requirement was too short. Several organizations representing persons with hearing disabilities said that stamping the letters ''HAC'' on a telephone would be more informative than stamping the date of manufacture.

c. Description and estimate of number of small businesses to which rules will apply. (1) The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id.* The RFA Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provisions also apply to nonprofit organizations and to governmental organizations.

(2) The rules in this *Report and Order* apply to four industry categories: (a) workplaces; (b) confined settings, such as hospitals and nursing homes; (c) hotels and motels; and (d) importers and manufacturers of telephones for use in the United States. There is little overlap among these categories because the Commission's workplace rules affect workplace noncommon areas, while the rules that apply to confined settings and hotels and motels affect other than the workplaces of those establishments. Telephone manufacturers would be affected as workplaces, but separately affected by the requirement to affix the letters ''HAC'' to telephones and by the volume control manufacturing requirement. The determination of

whether or not an entity within these industry groups is small is made by the Small Business Administration (SBA). These standards also apply in determining whether an entity is a small business for purposes of the RFA.

(3) *Workplaces:* Workplaces encompass establishments for profit and nonprofit, plus local, state and federal governmental entities. Establishments with fewer than fifteen employees generally would be excluded, because they are exempt from the Commission's new rules, except for the work station requirement. SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and less than $25 million in sales or assets. There are approximately 6.3 million establishments in the SBA database. We estimate that our rules would affect fewer than 6.3 million establishments, because our rules exclude establishments with fewer than fifteen employees. However, we have not been able to determine what portion of the 6.3 million establishments have fewer than fifteen employees. The SBA data base does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by our rules.

(4) *Confined Settings:* According to the SBA's regulations, nursing homes and hospitals must have annual gross receipts of $5 million or less in order to qualify as a small business concern. 13 CFR § 121.201. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of $5 million or less. There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of $5 million or less. Thus, the approximate number of small confined setting entities to which the Commission's new rules will apply is 8,247.

(5) *Hotels and Motels:* According to the SBA's regulations, hotels and motels must have annual gross receipts of $5 million or less in order to qualify as a small business concern. 13 CFR § 121.201. There are approximately 34,671 hotel and motel firms in the United States. Of those, approximately 31,382 have gross receipts of $5 million or less.

(6) *Telephone Manufacturers and Importers:* According to the SBA's regulations, telephone apparatus firms must have 1,000 or fewer employees in order to qualify as a small business concern. 13 CFR § 121.201. There are approximately 456 telephone apparatus firms in the nation. Figures are not available on how many of these firms have 1,000 or fewer employees, but 401 of the firms have 500 or fewer employees. It is probable that the great bulk of the 456 firms have 1,000 or fewer employees, and would be classified as small entities. In addition to telephone apparatus firms, there are approximately 12,654 wholesale electronic parts and equipment firms in the nation. Many of these firms serve as importers of telephones. According to the SBA's regulations, wholesale electronic parts and equipment firms must have 100 or fewer employees in order to qualify as a small business entity. 13 CFR § 121.201. Of the 12,654 firms, 12,161 have fewer than 100 employees, and would be classified as small entities.

d. Description of projected reporting, recordkeeping and other compliance requirements of the rules. (1) *Reporting and Recordkeeping:* This R&O involves three reporting requirements. First, as of April 1, 1997, importers and manufacturers of telephones for use in the United States must stamp their telephones with the letters ''HAC.'' The potential respondents to this requirement are importers and manufactures of telephones for use in the United States. Second, until the rules for all workplace telephones go into effect, employers are required to designate certain hearing aid compatible telephones for emergency use. The potential respondents to this requirement are owners of workplaces with fifteen or more employees. Third, a Commission rule regarding packaging is amended to clarify that the type of hearing aid compatibility referred to is electro-magnetic coil compatibility. The potential respondents to this requirement are importers and manufacturers of telephones for use in the United States.

(2) *Other Compliance Requirements:*

(a) The rules adopted in this R&O require that as of certain dates, owners of workplaces, confined settings and hotels and motels provide telephones that have electro-magnetic coil hearing aid compatibility and volume control. These requirements will affect owners of workplaces, confined settings, and hotels and motels.

(b) The rules also require importers and manufacturers of telephones for use in the United States to provide telephones with volume control, beginning November 1, 1998. These rules would affect small as well as large domestic manufacturers of telephones.

e. Commission efforts to learn of, and respond to, the views of small business. In 1992 the Commission adopted rules requiring hearing aid compatible telephones in workplaces, confined settings and hotels and motels. As the time to implement the rules approached, businesses, including small businesses, stated that they were having difficulty implementing the rules. In response, the Commission suspended the rules in 1993. Subsequently, the Commission formed the nineteen-member Hearing Aid Compatibility Negotiated Rulemaking Committee. Among the Committee's membership were representatives of small business. Both the hotel and motel representatives (American Hotel and Motel Association) and the confined setting representatives (American Health Care Association) have many small members. In addition, the Tele-Communications Association (now known as The Information Technology and Telecommunications Association, or ITTA), a broadly based end-users group, was a member. ITTA has approximately 1,000 members, including small entities as members.

f. Commission efforts to minimize burdens on small business. (1) In applying the new rules, the Commission has sought to minimize any disproportionate burden on small entities. The workplace requirements, for example, generally exempt workplaces of fewer than fifteen employees. The Commission provided this exemption because small employers have smaller budgets, which can make installation of new telephones disproportionately more burdensome for those employers. This is the same coverage cutoff standard used in the ADA. In calculating the number of ''employees'' for purposes of compliance, the total employment force of an establishment, not the number of employees an employer may have at a particular site, is the determining factor. This distinction emphasizes that it is the overall size of the entity, not the circumstance of the deployment of its employees, that determines the impact of the Commission's requirements.

(2) The Commission also took into account the needs of small entities in setting the compliance deadlines for workplaces. The Committee determined that the average useful life of a workplace telephone is seven years. Almost all telephones manufactured or imported for use in the United States since August 16, 1989 have had to be hearing aid compatible. Thus, at the present time, any workplace telephone is most likely to be hearing aid compatible. As a margin of flexibility, however, the Commission set the workplace compliance deadline for November 1, 2005 for telephones purchased between January 1, 1985 through December 31, 1989, and November 1, 2000 for all other telephones. Even after those dates, small entities are allowed to exercise the rebuttable presumption, so that they do not have to test and replace their telephones. Before those dates, workplaces may use existing stored telephone inventories as replacements, subject to a rebuttable presumption. Thus, the stored inventories of small entities are not rendered obsolete.

(3) The requirements for confined settings and hotels and motels also make distinctions in the size of establishment. Smaller establishments are given more time to comply. Confined setting establishments with fewer than fifty beds are given an extra year, until November 1, 1998, to comply, and hotels and motels with fewer than eighty rooms also are given an extra year, until November 1, 1999, to comply.

(4) The Commission also took into account the needs of small entities in the terms of the volume control manufacturing requirement. The Commission had proposed, in the NPRM, a one-year deadline for this requirement, but after receiving comment from organizations representing large and small manufacturers, the Commission extended the period to two-years, until November 1, 1998, before compliance with the volume control rule is required. Similarly, the requirement that manufacturers affix the letters ''HAC'' to new telephones does not go into effect upon the effective date of the new rules, but six months later, on April 1, 1997. Current small manufacturer telephone inventories are not affected by this requirement.

(5) Under Section 610(e) of the HAC Act, the Commission must consider the costs, as well as the benefits, of the proposed rules to all telephone users, including persons with and without hearing disabilities. In the NPRM, the Commission solicited comment on the costs to establishments of providing volume control and hearing aid compatible telephones. After reviewing the comments, the Commission concluded that the new rules will not impose significant additional costs on telephone users, manufacturers or establishments, and that any costs are significantly outweighed by the benefits to be achieved.

g. Commission efforts to maximize benefits. Small entities will be among the beneficiaries of the Commission's new rules. Under the new rules, telephones in workplaces, confined settings and hotels and motels will be more accessible to persons with hearing disabilities. These changes may lead to new business for hotels and motels and confined settings, and workplaces may be able to hire better employees, since the pool of potential employees will be widened to include persons with hearing disabilities. In addition, the level of public safety will increase in all three settings, thereby benefitting both the business setting and the public at large. Telephones also will be easier to identify by installers, many of whom will be small entities, as hearing aid compatible, once they are stamped ''HAC.'' Finally, the volume control requirement probably will increase the consumer demand for volume control telephones, benefitting large and small manufacturers alike.

h. Significant alternatives minimizing impact on small entities that were rejected. (1) The Commission considered not including within the purview of ''telephones provided for emergency use'' telephones in workplace non-common areas, telephones in confined settings and telephones in hotels and motels. However, the Commission concluded that given the nature of such settings, and the needs of persons in such settings, telephones in workplace noncommon areas, confined settings and hotels and motels should be considered telephones provided for emergency use. The Commission noted that persons with hearing disabilities are particularly vulnerable in confined settings and hotels and motels because the persons may be unfamiliar with the settings and isolated in the event of an emergency.

(2) Similarly, the Commission considered not adding a requirement for volume control, but concluded that volume control should be required. The HAC Act defines telephone hearing aid compatibility as ''an internal means for effective use with hearing aids,'' and the legislative history cites amplification, or volume control, as one such type of internal means. The Commission is obliged under the HAC Act to encourage the use of currently available technology in fulfilling the act's mandates. Through the conclusions of its advisory committee, the Hearing Aid Compatibility Negotiated Rulemaking Committee, the Commission determined that volume control is a currently available technology that would help give many persons with hearing disabilities increased access to the telephone network.

i. Summary of paperwork, recordkeeping, and other compliance requirements for wireline telephones. (a) Paperwork requirements: As of April 1, 1997, importers and manufacturers of telephones for use in the United States must stamp their telephones with the letters ''HAC.'' Until the rules for all workplace telephones go into effect, employers are required to designate certain hearing aid compatible telephones for emergency use. A Commission rule regarding packaging is amended to clarify that the type of hearing aid compatibility referred to is electro-magnetic coil compatibility.

(b) Recordkeeping requirements: NONE.

(c) Other compliance requirements: As of the effective date of this order, telephones, including headsets, made available to an employee with a hearing disability for use by that employee in his or her employment duty shall be hearing aid compatible;

As of the effective date of this order, newly purchased or replacement telephones in workplaces, confined settings and hotels and motels must be hearing aid compatible. In workplaces, if the replacement telephone is from inventory existing before the effective date of this order, any person may make a bona fide request that such telephone be hearing aid compatible, and, after November 1, 1998, have volume control.

As of the effective date of this order, if a hotel or motel room is renovated or newly constructed, or the telephone in a hotel or motel room is replaced or substantially, internally repaired, the telephone must be hearing aid compatible.

As of the effective date of this order, and until the applicable workplace dates of January 1, 2000 or 2005, workplaces of fifteen or more employees must provide and designate telephones for emergency use by employees with hearing disabilities by providing a hearing aid compatible telephone within a reasonable and accessible distance for an individual searching for a telephone from any point in the workplace, or by providing hearing aid compatible wireless telephones.

As of April 1, 1997, the telephones in at least twenty percent of hotel and motel guest rooms must be hearing aid compatible.

As of November 1, 1997 telephones (except telephones purchased and maintained by a resident for use in that resident's room, and except where a confined establishment has an alternate means of signalling life-threatening or emergency situations that is available, working and monitored) in confined settings with fifty or more beds must be hearing aid compatible;

As of November 1, 1998, telephones (except telephones purchased and maintained by a resident for use in that resident's room, and except where a confined establishment has an alternate means of signalling life-threatening or emergency situations that is available, working and monitored) in confined settings with fewer than fifty beds must be hearing aid compatible;

As of November 1, 1998, the telephones in hotels and motels with eighty or more guest rooms must be hearing aid compatible;

As of November 1, 1998 telephones for use in the United States provided by importers and manufacturers must have volume control, and newly purchased and replacement telephones in workplaces, confined settings and hotels and motels must have volume control. In addition, in hotels and motels, where a hotel or motel room is renovated or newly constructed, or the telephone is replaced or substantially, internally repaired, the telephone in that room must have volume control.

As of November 1, 1999, the telephones in hotels and motels with fewer than eighty guest rooms must be hearing aid compatible.

As of November 1, 1999, where a hotel or motel uses telephones purchased during the period January 1, 1985 through December 31, 1989, the telephones in at least twenty-five percent of hotel and motel guest rooms must be hearing aid compatible.

As of January 1, 2000, non-common area telephones (except headsets, and except for telephones purchased between January 1, 1985 and December 31, 1989, and except for telephones made available to an employee with a hearing disability under Section 68.112(b)(3)(A)) in workplace establishments of fifteen or more employees must be hearing aid compatible. There shall be a rebuttable presumption that, as of January 1, 2000, all such telephones located in the workplace are hearing aid compatible.

As of January 1, 2001, where a hotel or motel uses telephones purchased during the period January 1, 1985 through December 31, 1989, the telephones in one hundred percent of hotel and motel guest rooms must be hearing aid compatible, if the hotel or motel has eighty or more guest rooms.

As of January 1, 2004, where a hotel or motel uses telephones purchased during the period January 1, 1985 through December 31, 1989, the telephones in one hundred percent of hotel and motel guest rooms must be hearing aid compatible, if the hotel or motel has fewer than eighty guest rooms.

As of January 1, 2005, non-common area telephones (except headsets, and except for telephones made available to an employee with a hearing disability under Section 68.112(b)(3)(A)) purchased between January 1, 1985 and January 1, 1989 in workplace establishments of fifteen or more employees must be hearing aid compatible. There shall be a rebuttable presumption that, as of January 1, 2005, all such telephones located in the workplace are hearing aid compatible.

j. Report to Congress. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this R&O in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will also be published in the Federal Register.

Ordering Clauses

1. Accordingly, it is ordered that, pursuant to Sections 1, 4, 201–205, 218, 220 and 610 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201–205, 218, 220, and 610, and 5 U.S.C. §§ 552 and 553, this Report and Order is adopted, and Parts 64 and 68 of the Commission's Rules are amended as set forth below.

2. It is further ordered that the rule amendments set forth below shall be effective October 23, 1996.

3. It is further ordered that the Emergency Request to Reinstate Enforcement of the Hearing Aid Compatibility Rules, dated May 12, 1993, by Alexander Graham Bell Association for the Deaf, et al, is dismissed.

4. It is further ordered that, pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau, to make minor changes, pursuant to the Administrative Procedure Act procedures, in the technical standards specified in Sections 68.316 and 68.317 of the rules, in order to incorporate minor changes made in the relevant industry standards.

List of Subjects

47 CFR Part 64

Communications common carriers, Federal Communications Commission, Hearing aid compatibility, Individuals with disabilities, Telephone.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Federal Communications Commission, Hearing aid compatibility, Incorporation by reference, Reporting and recordkeeping requirements, Telephone, Volume control.

Federal Communications Commission

Shirley Suggs,

Chief, Publications Branch.

Rule Changes

Parts 64 and 68 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 201, 218, 226, 228, 610 unless otherwise noted.

2. Section 64.607 is revised to read as follows:

§ 64.607 Provision of hearing aid compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid compatible telephone, as defined in § 68.316 of this chapter, and provide related installation and maintenance services for such telephones on a detariffed basis to any customer with a hearing disability who requests such equipment or services.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201–5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 602, 610.

2. Section 68.3 is amended by adding the following definition in alphabetical order to read as follows:

§ 68.3 Definitions.

* * * * *

Hearing aid compatible: Except as used at §§ 68.4(a)(3) and 68.414, the terms hearing aid compatible or hearing aid compatibility are used as defined in § 68.316, unless it is specifically stated that hearing aid compatibility volume control, as defined in § 68.317, is intended or is included in the definition.

* * * * *

3. Section 68.4 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 68.4 Hearing aid compatible telephones.

(a)(1) Except for telephones used with public mobile services, telephones used with private radio services, and cordless and secure telephones, every telephone manufactured in the United States (other than for export) or imported for use in the United States after August 16, 1989, must be hearing aid compatible, as defined in § 68.316. Every cordless telephone manufactured in the United States (other than for export) or imported into the United States after August 16, 1991, must be hearing aid compatible, as defined in § 68.316.

(2) Unless otherwise stated and except for telephones used with public mobile services, telephones used with private radio services and secure telephones, every telephone listed in § 68.112 must be hearing aid compatible, as defined in § 68.316.

* * * * *

4. A new Section 68.6 is added to read as follows:

§ 68.6 Telephones with volume control.

As of November 1, 1998, all telephones, including cordless telephones, as defined in § 15.3(j) of this chapter, manufactured in the United States (other than for export) or imported for use in the United States, must have volume control in accordance with § 68.317. Secure telephones, as defined by § 68.3, are exempt from this section, as are telephones used with public mobile services or private radio services.

5. Section 68.112 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (b)(5) and (c), and adding paragraph (b)(6), as follows:

§ 68.112 Hearing aid compatibility.

* * * * *

(b) * * *

(1) Telephones, except headsets, in places where a person with a hearing disability might be isolated in an emergency, including, but not limited to, elevators, highways, and tunnels for automobile, railway or subway, and workplace common areas.

Note to paragraph (b)(1): Examples of workplace common areas include libraries, reception areas and similar locations where employees are reasonably expected to congregate.

* * * * *

(3) Telephones, except headsets, in workplace non-common areas. Note: Examples of workplace non-common areas include private enclosed offices, open area individual work stations and mail rooms. Such non-common area telephones are required to be hearing aid compatible, as defined in § 68.316, by January 1, 2000, except for those telephones located in establishments with fewer than fifteen employees; and those telephones purchased between January 1, 1985 through December 31, 1989, which are not required to be hearing aid compatible, as defined in § 68.316, until January 1, 2005.

(i) Telephones, including headsets, made available to an employee with a hearing disability for use by that employee in his or her employment duty, shall, however, be hearing aid compatible, as defined in § 68.316.

(ii) As of January 1, 2000 or January 1, 2005, whichever date is applicable, there shall be a rebuttable presumption that all telephones located in the workplace are hearing aid compatible, as defined in § 68.316. Any person who identifies a telephone as non-hearing aid-compatible, as defined in § 68.316, may rebut this presumption. Such telephone must be replaced within fifteen working days with a hearing aid compatible telephone, as defined in § 68.316, including, as of November 1, 1998, with volume control, as defined in § 68.317.

(iii) Telephones, not including headsets, except those headsets furnished under paragraph (b)(3)(i) of this section, that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in § 68.316, after October 23, 1996; and

(B) Including, as of November 1, 1998, with volume control, as defined in § 68.317.

(iv) When a telephone under paragraph (b)(3)(iii) of this section is replaced with a telephone from inventory existing before October 23, 1996, any person may make a bona fide request that such telephone be hearing aid compatible, as defined in § 68.316. If the replacement occurs as of November 1, 1998, the telephone must have volume control, as defined in § 68.317. The telephone shall be provided within fifteen working days.

(v) During the period from October 23, 1996, until the applicable date of January 1, 2000 or January 1, 2005, workplaces of fifteen or more employees also must provide and designate telephones for emergency use by employees with hearing disabilities through one or more of the following means:

(A) By having at least one coin-operated telephone, one common area telephone or one other designated hearing aid compatible telephone within a reasonable and accessible distance for an individual searching for a telephone from any point in the workplace; or

(B) By providing wireless telephones that meet the definition for hearing aid compatible for wireline telephones, as defined in § 68.316, for use by employees in their employment duty outside common areas and outside the offices of employees with hearing disabilities.

(4) All credit card operated telephones, whether located on public property or in a semipublic location (e.g. drugstore, gas station, private club), unless a hearing aid compatible (as defined in § 68.316) coin-operated telephone providing similar services is nearby and readily available. However, regardless of coin-operated telephone availability, all credit card operated telephones must be made hearing aid-compatible, as defined in § 68.316, when replaced, or by May 1, 1991, which ever comes sooner.

(5) Telephones needed to signal life threatening or emergency situations in confined settings, including but not limited to, rooms in hospitals, residential health care facilities for senior citizens, and convalescent homes:

(i) A telephone that is hearing aid compatible, as defined in § 68.316, is not required until:

(A) November 1, 1997, for establishments with fifty or more beds, unless replaced before that time; and

(B) November 1, 1998, for all other establishments with fewer than fifty beds, unless replaced before that time.

(ii) Telephones that are purchased, or replaced with newly acquired telephones, must be:

(A) Hearing aid compatible, as defined in § 68.116, after October 23, 1996;

(B) Including, as of November 1, 1998, with volume control, as defined in § 68.317.

(iii) Unless a telephone in a confined setting is replaced pursuant to paragraph (b)(5)(ii) of this section, a hearing aid compatible telephone shall not be required if:

(A) A telephone is both purchased and maintained by a resident for use in that resident's room in the establishment; or

(B) The confined setting has an alternative means of signalling life-threatening or emergency situations that is available, working and monitored.

(6) Telephones in hotel and motel guest rooms, and in any other establishment open to the general public for the purpose of overnight accommodation for a fee. Such telephones are required to be hearing aid compatible, as defined in § 68.316, except that, for establishments with eighty or more guest rooms, the telephones are not required to be hearing aid compatible, as defined in § 68.316, until November 1, 1998; and for establishments with fewer than eighty guest rooms, the telephones are not required to be hearing aid compatible, as defined in § 68.316, until November 1, 1999.

(i) Anytime after October 23, 1996, if a hotel or motel room is renovated or newly constructed, or the telephone in a hotel or motel room is replaced or substantially, internally repaired, the telephone in that room must be:

(A) Hearing aid compatible, as defined in § 68.316, after October 23, 1996;

(B) Including, as of November 1, 1998, with volume control, as defined in § 68.317.

(ii) The telephones in at least twenty percent of the guest rooms in a hotel or motel must be hearing aid compatible, as defined in § 68.316, as of April 1, 1997.

(iii) Notwithstanding the requirements of paragraph (b)(6) of this section, hotels and motels which use telephones purchased during the period January 1, 1985 through December 31, 1989 may provide telephones that are hearing aid compatible, as defined in § 68.316, in guest rooms according to the following schedule:

(A) The telephones in at least twenty percent of the guest rooms in a hotel or motel must be hearing aid compatible, as defined in § 68.316, as of April 1, 1997;

(B) The telephones in at least twenty-five percent of the guest rooms in a hotel or motel must be hearing aid compatible, as defined in § 68.316, by November 1, 1999; and

(C) The telephones in one-hundred percent of the guest rooms in a hotel or motel must be hearing aid compatible, as defined in § 68.316, by January 1, 2001 for establishments with eighty or more guest rooms, and by January 1, 2004 for establishments with fewer than eighty guest rooms.

(c) *Telephones frequently needed by the hearing impaired.* Closed circuit telephones, i.e., telephones which cannot directly access the public switched network, such as telephones located in lobbies of hotels or apartment buildings; telephones in stores which are used by patrons to order merchandise; telephones in public transportation terminals which are used to call taxis or to reserve rental automobiles, need not be hearing aid compatible, as defined in § 68.316, until replaced.

6. Section 68.224 is amended by revising paragraph (a) to read as follows:

§ 68.224 Notice of non-hearing aid compatibility.

* * * * *

(a) Contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible, as is defined in §§ 68.4(a)(3) and 68.316, or if offered for sale without a surrounding package, shall be affixed with a written statement that the telephone is not hearing aid-compatible, as defined in §§ 68.4(a)(3) and 68.316; and

* * * * *

7. Section 68.300 is amended by adding a new paragraph (c) to read as follows:

§ 68.300 Labelling requirements.

* * * * *

(c) As of April 1, 1997, all registered telephones, including cordless telephones, as defined in § 15.3(j) of this chapter, manufactured in the United States (other than for export) or imported for use in the United States, that are hearing aid compatible, as defined in § 68.316, shall have the letters ''HAC'' permanently affixed thereto. ''Permanently affixed'' shall be defined as in § 68.300(b)(5). Telephones used with public mobile services or private radio services, and secure telephones, as defined by § 68.3, are exempt from this requirement.

8. Section 68.316 is amended by revising the section heading and the introductory paragraph to read as follows:

§ 68.316 Hearing aid compatibility magnetic field intensity requirements: technical standards.

A telephone handset is hearing aid compatible for the purposes of this section if it complies with the following standard, published by the Telecommunications Industry Association, copyright 1983, and reproduced by permission of the Telecommunications Industry Association:

* * * * *

9. A new Section 68.317 is added to read as follows:

§ 68.317 Hearing aid compatibility volume control: technical standards.

(a) An analog telephone complies with the Commission's volume control requirements if the telephone is equipped with a receive volume control that provides, through the receiver in the handset or headset of the telephone, 12 dB of gain minimum and up to 18 dB of gain maximum, when measured in terms of Receive Objective Loudness Rating (ROLR), as defined in paragraph 4.1.2 of ANSI/EIA–470–A–1987 (Telephone Instruments With Loop Signaling) . The 12 dB of gain minimum must be achieved without significant clipping of the test signal. The telephone also shall comply with the upper and lower limits for ROLR given in Table 4.4 of ANSI/EIA–470–A–1987 when the receive volume control is set to its normal unamplified level.

Note to paragraph (a): Paragraph 4.1.2 of ANSI/EIA–470–A–1987 identifies several characteristics related to the receive response of a telephone. It is only the normal unamplified ROLR level and the change in ROLR as a function of the volume control setting that are relevant to the specification of volume control as required by this section.

(b) The ROLR of an analog telephone shall be determined over the frequency range from 300 to 3300 HZ for short, average, and long loop conditions represented by 0, 2.7, and 4.6 km of 26 AWG nonloaded cable, respectively. The specified length of cable will be simulated by a complex impedance. (See Figure A.) The input level to the cable simulator shall be −10 dB with respect to 1 V open circuit from a 900 ohm source.

(c) A digital telephone complies with the Commission's volume control requirements if the telephone is equipped with a receive volume control that provides, through the receiver of the handset or headset of the telephone, 12 dB of gain minimum and up to 18 dB of gain maximum, when measured in terms of Receive Objective Loudness Rating (ROLR), as defined in paragraph 4.3.2 of ANSI/EIA/TIA–579–1991 (Acoustic-To-Digital and Digital-To-Acoustic Transmission Requirements for ISDN Terminals). The 12 dB of gain minimum must be achieved without significant clipping of the test signal. The telephone also shall comply with the limits on the range for ROLR given in paragraph 4.3.2.2 of ANSI/EIA/TIA–579–1991 when the receive volume

control is set to its normal unamplified level.

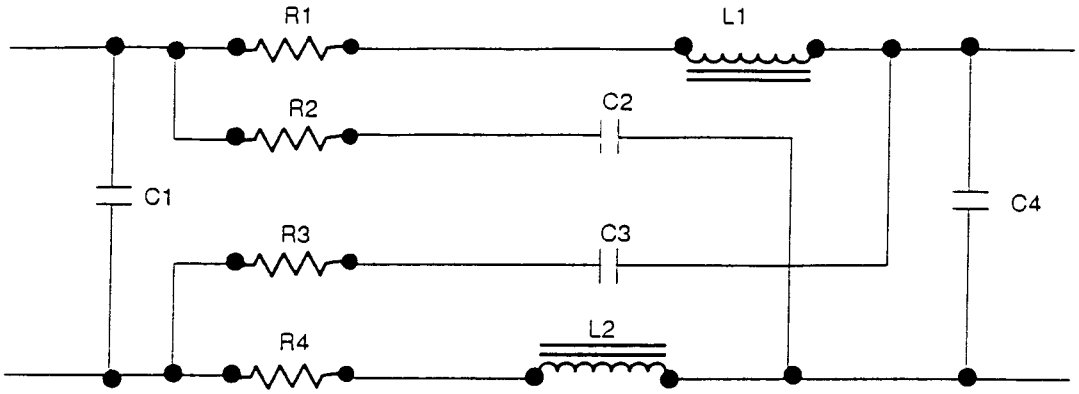
(d) The ROLR of a digital telephone shall be determined over the frequency range from 300 to 3300 Hz using the method described in paragraph 4.3.2.1 of ANSI/EIA/TIA–579–1991. No variation in loop conditions is required for this measurement since the receive level of a digital telephone is independent of loop length.

(e) The ROLR for either an analog or digital telephone shall first be determined with the receive volume control at its normal unamplified level. The minimum volume control setting shall be used for this measurement unless the manufacturer identifies a different setting for the nominal volume level. The ROLR shall then be determined with the receive volume control at its maximum volume setting. Since ROLR is a loudness rating value expressed in dB of loss, more positive values of ROLR represent lower receive levels. Therefore, the ROLR value determined for the maximum volume control setting should be subtracted from that determined for the nominal volume control setting to determine compliance with the gain requirement.

(f) The 18 dB of receive gain may be exceeded provided that the amplified receive capability automatically resets to nominal gain when the telephone is caused to pass through a proper on-hook transition in order to minimize the likelihood of damage to individuals with normal hearing.

(g) These incorporations by reference of paragraph 4.1.2 (including Table 4.4) of American National Standards Institute (ANSI) Standard ANSI/EIA–470–A–1987 and paragraph 4.3.2 of ANSI/EIA/TIA–579–1991 were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of these publications may be purchased from the American National Standards Institute (ANSI), Sales Department, 11 West 42nd Street, 13th Floor, New York, NY 10036, (212) 642–4900. Copies also may be inspected during normal business hours at the following locations: Federal Communications Commission, 2000 M Street, N.W., Public Reference Room, Room 220, Washington, D.C. 20554; and Office of the Federal Register, 800 N. Capitol Street, N.W., suite 700, Washington, D.C.

BILLING CODE 6712–01–P



Component	0.914 km (3 kft)	1.83 km (6 kft)
R_1, R_4	124 Ω	249 Ω
R_2, R_3	174 Ω	312 Ω
C_1, C_4	0.0113 μF	0.0226 μF
C_2, C_3	0.0122 μF	0.0255 μF
L_1, L_2	0.336 mH	0.983 mH

Notes:
(1) *All values are ±1%.*
(2) 2.7 km *(9 kft) and* 4.6 km *(15 kft) can be made up of cascaded sections of the above.*

Loop Simulator for 26 AWG Cable

[FR Doc. 96–20705 Filed 8–13–96; 8:45 am]
BILLING CODE 6712–01–C

47 CFR Part 73

[MM Docket No. 95–82; RM–8630 and RM–8743]

Radio Broadcasting Services; Monticello, Perry, Quincy, and Springfield, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 268C1 for Channel 268C2 at Quincy, Florida, and modifies the license for Station WXSR(FM) to specify operation on Channel 268C1, in response to a counterproposal filed by Great South Broadcasting, Inc. *See* 60 FR 32934, June 26, 1995. The coordinates for Channel 268C1 at Quincy are 30–10–22 and 84–26–52. To accommodate the upgrade at Quincy, we are substituting Channel 289C3 for Channel 270C3 at Monticello, Florida, at coordinates 30–25–05 and 83–50–18, substituting Channel 221A for Channel 288A at Perry, Florida, at coordinates 30–06–27 and 83–34–00, and substituting Channel 266A for Channel 267A at Springfield, Florida, at coordinates 30–12–12 and 85–36–57. With this action this proceeding is terminated.

EFFECTIVE DATE: September 16, 1996.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–82, adopted July 26, 1996, and released August 2, 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 Florida, is amended by removing Channel 268C2 and adding Channel 268C1 at Quincy, by removing Channel 270C3 and adding Channel 289C3 at Monticello, by removing Channel 288A and adding Channel 221A at Perry and by removing Channel 267A and adding Channel 266A at Springfield.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20081 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket 90–189; RM–6904, RM–7114, RM–7186, RM–7415, RM–7298]

Radio Broadcasting Services; Farmington, Grass Valley, Jackson, Linden, Placerville, and Fair Oaks, CA, Carson City and Sun Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 234C from Carson City, Nevada, to Fair Oaks, California, as Channel 234B1. In doing so, it also modifies the license of Station KIZS, Channel 234C, Carson City, to specify operation on Channel 234B1 at Fair Oaks. This action also makes possible the allotment of Channel 233C2 to Sun Valley, Nevada. The reference coordinates for Channel 234B1 at Fair Oaks, California, are 38–40–22 and 121–19–47. The reference coordinates for Channel 233C2 at Sun Valley, Nevada, are 39–40–3 and 119–30–21.

EFFECTIVE DATE: August 29, 1996.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Second Report and Order* in MM Docket No.90–189, adopted July 5, 1996, and released July 12, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Washington, DC 20037.

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 Nevada, is amended by removing Carson City, Channel 234C.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Sun Valley, Channel 233C2.

4. Section 73.202(b), the FM Table of Allotments under California, is amended by adding Fair Oaks, Channel 234B1.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 96–20646 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 506, 547 and 552

[APD 2800.12A, CHGE 72]

RIN 3090–AF97

General Services Administration Acquisition Regulation; Implementation of FAC 90–39 and Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Correction to final regulation.

SUMMARY: This document corrects the effective date of final regulation (APD 2800.12A, CHGE 72), which was published Friday, July 26, 1996 (61 FR 39088). The regulation related to the approval levels for the justification of other than full and open competition in part 506 and made editorial changes in parts 547 and 552.

EFFECTIVE DATE: August 19, 1996.

FOR FURTHER INFORMATION CONTACT: Ed McAndrew, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Background

As published, the effective date of the regulation is incorrect.

Accordingly, the publication on July 26, 1996, of the final regulation (APD 2800.12A CHGE 72), which was the subject of FR Doc. 96–18987, is corrected as follows: On page 39088, second column, the effective date is corrected to read ''**EFFECTIVE DATE:** August 19, 1996.''

Dated: August 8, 1996.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 96–20670 Filed 8–13–96; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1996 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: In compliance with its fee update regulations, the Surface Transportation Board (Board) adopts its 1996 User Fee Update and revises its fee schedule at this time to recover the costs associated with providing services to the public.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5249 or David T. Groves, (202) 927–6395. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board to update its user fee schedule annually. By notice of proposed rulemaking published on April 5, 1996, at 61 FR 15208, the Board requested comments on its 1996 proposed fee schedule. Upon reviewing the comments, the Board is adopting the proposed fee schedule with the following modifications: (1) Fee Item (27)—Trails use requests is established at $150; (2) Fee Item (47)—National Railroad Passenger Corporation conveyance proceeding is established at $150; (3) Fee Item (48)—National Railroad Passenger Corporation compensation proceeding is established at $150; (4) Fee Item (56)(i)—Formal complaints filed under the coal rate guidelines is tentatively set at $23,300, Fee Item (56)(ii)—All other formal complaints is tentatively set at $2,300; [1] (5) Fee Item (58)(i)—A petition for declaratory order involving an existing rate or practice remains at $1,000, and Fee Item (58)(ii)—All other petitions for declaratory order remains at $1,400; (6) Fee Item (61)—Appeals to Board decisions and petitions to revoke an exemption is established at $150; and (7) Fee Item (62)—Motor carrier undercharge proceeding is established at $150. In addition, Fee Item (12)—Petition

[1] Fee items 56(i) and 56(ii) are currently the subject of legislative debate. Therefore, these items are being set tentatively, but will not take effect at this time. The Board will issue a further decision addressing these items after the legislative debate is concluded. In the meantime, they will remain at $1,000 each in the Board's fee schedule.

for exemption involving construction of a rail line is modified so that the $41,700 fee also applies to construction applications.

We note that in *Class Exemption For Acquisition or Operation of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902*, STB Ex Parte No. 529, published in the Federal Register on June 24, 1996 at 61 FR 32355, the Board adopted Fee Item 36, Notice of exemption under 49 CFR 1150.41–1150.45, with a fee of $950. To be consistent with the revisions that are being made to the fee schedule in this proceeding, that fee item will be renumbered as Fee Item 14(ii) and the fee item [proposed Fee Item 14(ii)] for petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902 will be renumbered as Fee Item 14(iii).

The Board also adopts the proposed modifications to update these regulations to reflect the recent enactment of the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803.

The Board certifies that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the modifications made in these rules and the Board's regulations in 49 CFR 1002.2(e) provide for waiver of filing fees for those entities which can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Room 2229, 1201 Constitution Ave. NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 2, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

§ 1002.1 [Amended]

2. Section 1002.1 is amended as follows:

a. In the introductory paragraph remove the words ''Interstate Commerce Commission'' and add in their place the words ''Surface Transportation Board''.

b. In paragraph (e)(2) remove the word ''Commission's'' and add in its place the word ''Board's''; remove the words ''Section of Systems Development, Interstate Commerce Commission,'' and add in their place the words ''System Services Branch, Surface Transportation Board,''.

c. In paragraph (f)(11) remove the word ''Commission's'' and add in its place the word ''Board's''.

d. In the concluding text of paragraph (f)(14) remove the phrase ''ICC's Freedom of Information Office, 12th and Constitution Avenue N.W. Room 3132, Washington, DC 20423.'' and add in their place the words ''Surface Transportation Board's Freedom of Information Office, Washington, DC 20423.''.

e. In paragraph (g) remove the words ''Interstate Commerce Commission,'' and in their place add the words ''Surface Transportation Board,''.

f. In paragraph (h) remove the word ''Commission's'' and in its place add the word ''Board's''; remove the words ''Interstate Commerce Commission,'' and in their place add the words ''Surface Transportation Board,''

g. Paragraphs (b), (e)(1) and the chart in paragraph (f)(6) are revised to read as follow:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $24.00 per hour.

* * * * *

(e) * * *

(1) A fee of $42.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$7.13
GS–2	7.76
GS–3	8.75
GS–4	9.82
GS–5	10.99
GS–6	12.25
GS–7	13.61
GS–8	15.07
GS–9	$16.65
GS–10	18.33
GS–11	20.14
GS–12	24.14
GS–13	28.71
GS–14	33.93
GS–15 and over	39.91

* * * * *

§ 1002.2 [Amended]

3. Section 1002.2 is amended as follows:

a. In paragraph (a)(2) introductory text remove the word ''Commission's'' and add in its place the word ''Board's''.

b. In paragraph (a)(2)(ii) after the words ''Debt Collection Act'' add the words ''of 1982'', remove the word ''Commission's'' and add in its place the word ''Board's''.

c. In paragraph (a)(2)(iii) remove the words ''room 1330, Interstate Commerce Commission, Washington, DC 20423:'' and add in their place the words ''Surface Transportation Board, Washington, DC:''.

d. In paragraph (a)(3) remove the words ''Interstate Commerce Commission'' and add in their place the words ''Surface Transportation Board''.

e. In paragraphs (b), (c), and (d)(4) remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

f. In paragraph (e), the heading, remove the first ''of'' and add in its place the word ''or''. Also, in the introductory text, paragraphs (e)(2), (e)(2)(i), and in the heading of paragraph (e)(2)(iii) remove the word ''Commission'' and add in its place the word ''Board''.

g. In paragraphs (g)(1), (g)(1)(ii), (g)(1)(iii) and (g)(2) remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

h. In § 1002.2, paragraphs (a)(1), (d), and (f) are revised to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract summary, or other document is tendered for filing. The filing fee for tariffs, including schedules, and contracts summaries including supplements (Item 78) may be charged to tariff filing fee accounts established by the Board in accordance with paragraph (a)(2) of this section.

* * * * *

(d) *Related or consolidated proceedings.* (1) Separate fees need not be paid for related applications filed by the same applicant which would be the subject of one proceeding.

(2) A separate fee will be assessed for the filing of an application for temporary authority to operate a motor carrier of passengers as provided for in paragraph (f)(5) of this section regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(2) of this section.

(3) The Board may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

* * * * *

(f) Schedule of filing fees.

Type of proceeding	Fee
Part I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$2,400.
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,100.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13706	$15,400.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$2,500.
(ii) Minor amendment	$50.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$250.
(6)–(10) [Reserved]	
Part II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$4,000.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$1,000.
(iii) Petition for exemption under 49 U.S.C. 10502 (except petitions involving construction of a rail line)	$7,000.
(12) An application or a petition for exemption under 49 U.S.C. 10502 involving the construction of a rail line	$41,700.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902..	$3,400
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$950.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$3,700.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	$950.
(16)–(20) [Reserved]	
Part III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$12,400.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$2,000.
(iii) A petition for exemption under 49 U.S.C. 10502	$3,500.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$250.
(23) Abandonments filed by bankrupt railroads	$1,000.
(24) A request for waiver of filing requirements for abandonment application proceedings	$1,000.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$900.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$12,700.
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	$150.
(28)–(35) [Reserved]	
Part IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$10,600.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$5,700.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$830,500.
(ii) Significant transaction	$166,100.
(iii) Minor transaction	$3,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$950.
(v) Responsive application	$3,400.
(vi) Petition for exemption under 49 U.S.C. 10502	$5,200.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$830,500.
(ii) Significant transaction	$166,100.
(iii) Minor transaction	$3,400.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$750.
(v) Responsive application	$3,400.
(vi) Petition for exemption under 49 U.S.C. 10502	$5,200.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$830,500.
(ii) Significant transaction	$166,100.
(iii) Minor transaction	$3,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$650.
(v) Responsive application	$3,400.

Type of proceeding	Fee
(vi) Petition for exemption under 49 U.S.C. 10502	$5,200.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$830,500.
(ii) Significant transaction	$166,100.
(iii) Minor transaction	$3,400.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$800.
(v) Responsive application	$3,400.
(vi) Petition for exemption under 49 U.S.C. 10502	$3,700.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$1,300.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$39,000.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$7,200.
(ii) Minor amendment	$50
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$400.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$4,400.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$150.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail PassengerService Act.	$150.
(49)–(55) [Reserved]	
Part V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of rail carriers, motor carriers of passengers or motor carriers of household goods:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$1,000.
(ii) All other formal complaints	$1,000.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, or charges. 49 U.S.C. 10705.	$4,900.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$3,900.
(60) Labor arbitration proceedings	$7,600.
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$150.
(62) Motor carrier undercharge proceedings	$150.
(63)–(75) [Reserved]	
Part VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$650.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$70.
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page. ($13 minimum charge).
(ii) Tariffs transmitted by fax	$1 per page.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$40.
(ii) Applications involving over $25,000	$80.
(80) Informal complaint about rail rate applications	$300.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$40.
(ii) Petitions involving over $25,000	$80.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a) (2) and (3).	$100.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$22 per document.
(84) Informal opinions about rate applications (all modes)	$100.
(85) A railroad accounting interpretation	$600.
(86) An operational interpretation	$800.
(87)–(95) [Reserved]	
Part VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	$17 per delivery.
(97) Request for service or pleading list for proceedings	$13 per list.
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a **Federal Register** notice.	$150.
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a **Federal Register** notice.	$350.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	$100
(ii) Practitioners' Exam Information Package	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	$50.
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	$10.
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	$20.
(iv) Public requests for Source Codes to the PC version URCS Phase III	$500.

Type of proceeding	Fee
(v) PC version or mainframe version URCS Phase II	$400.
(vi) PC version or mainframe version Updated Phase II databases	$50.
(vii) Public requests for Source Codes to PC version URCS Phase II	$1,500.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	$450.
(ii) Requests for Public Use File on R–CD Each Additional Year	$150.
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	$650.
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	$450.
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R–CD	$500.
(vi) User Guide for latest available Carload Waybill Sample	$50.

§ 1002.3 [Amended]

4. Section § 1002.3 is amended as follows:

a. In paragraph (a) remove the word ''Commission'' and add in its place the word ''Board''.

b. In paragraph (d)(1) remove the word ''Commission'' and add in its place the word ''Board''; remove the phrase ''the Commission's FY 1983–1984 User Fee Cost Study.'' and add in its place the phrase ''the cost study set forth in *Revision of Fees For Services*, 1 I.C.C.2d 60 (1984) or subsequent cost studies.''.

c. In paragraph (d)(3)(i) remove the words ''and Bureaus'' following the words ''the Offices''.

d. In paragraph (d)(3)(ii) remove the word ''Commission'' wherever it appears and add in its place the word ''Board''.

e. In paragraph (d)(4) add a period after the words ''Federal Register'' and remove the remainder of the sentence.

[FR Doc. 96–20647 Filed 8–13–96; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 61, No. 158
Wednesday, August 14, 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–57–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 757 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 Boeing Model 747 and 757 series airplanes. This proposal would require repetitive visual inspections to detect discrepancies of the wire terminal assembly, electrical connector, and wire insulation on the fuel pump; and replacement of the fuel pump with a new fuel pump, if necessary. The proposed AD also would require repetitive insulation resistance tests of the fuel pump wiring. This proposal is prompted by reports of fuel leaks at the fuel boost and override/jettison pumps due to corrosion. The actions specified by the proposed AD are intended to prevent such a fuel leakage, which could result in a fire at the location of the affected fuel pump.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–57–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–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of fuel leaks at the fuel boost and override/jettison pumps on Boeing Model 747 series airplanes. As a result of these incidents, the fuel pumps were removed from these airplanes. These pumps had accumulated between 34,000 to 67,000 total hours since new or since overhaul.

Analyses of the removed pumps revealed that moisture ingression around the potting of the wire terminal assembly can cause corrosion in the wire terminal assembly. (Variation in the manufacturing of the connectors and exposure of an airplane to different operational environments can affect the time required to form the corrosion.) Such corrosion can lead to electrical arcing between the power pins and the pump case. The arcing could then cause deterioration of the terminal pins and thermal expansion of the material inside the cap. Thermal expansion can cause failure of the cap attachment flange or attaching screws, and, consequently lead to a fuel leak. A high current during arcing also could melt a hole through the end case and connector of the fuel pump, which also could result in a fuel leak.

Fuel leakage at the fuel boost and override/jettison pumps, if not detected and corrected, could result in a fire at the location of the affected fuel pump.

The fuel boost and override/jettison pumps of Model 747 series airplanes are similar in design to those of Model 757 series airplanes. Therefore, the FAA has determined that Model 757 series airplanes may be subject to the same fuel leakage problem.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–28A2194, Revision 1, dated January 18, 1996 (for Model 747 series airplanes), and Boeing Service Bulletin 757–28A0043, Revision 1, dated January 18, 1996 (for Model 757 series airplanes). These service bulletins describe procedures for repetitive visual inspections to detect discrepancies (i.e., fuel leak, heat discoloration, and damage) of the wire terminal assembly, electrical connector, and wire insulation on the fuel pump; and replacement of the fuel pump with a new fuel pump, if necessary. These service bulletins also describe procedures for repetitive insulation resistance tests of the fuel pump wiring.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a visual inspection to detect discrepancies of the wire terminal assembly, electrical connector, and wire insulation on the fuel pump; and replacement of the fuel pump with a new fuel pump, if necessary. The proposed AD also would require repetitive insulation resistance tests of the fuel pump wiring. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 1,084 Model 747 series airplanes and 716 Model 757 series airplanes of the affected design in the worldwide fleet. Of these airplanes, 242 Model 747 series airplanes and 462 Model 757 series airplanes are of U.S. registry and would be affected by this proposed AD.

For 242 Model 747 series airplanes, it would take approximately 18 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model 747 series airplanes is estimated to be $261,360, or $1,080 per airplane.

For the 462 Model 757 series airplanes, it would take approximately 12 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model 757 series airplanes is estimated to be $332,640, or $720 per airplane.

The cost impact figures discussed above are 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 **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 96–NM–57–AD.

Applicability: All Model 747 and 757 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fuel leakage at the fuel boost and override/jettison pumps, which could result in a fire at the location of the affected fuel pump, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a visual inspection to detect discrepancies (i.e., fuel leak, heat discoloration, and damage) of the wire terminal assembly, electrical connector, and wire insulation on the fuel pump, in accordance with Boeing Service Bulletin 747–28A2194, Revision 1, dated January 18, 1996 (for Model 747 series airplanes), or Boeing Service Bulletin 757–28A0043, Revision 1, dated January 18, 1996 (for Model 757 series airplanes), as applicable.

(1) If no discrepancy is detected, prior to further flight, perform an insulation resistance test of the fuel pump wiring, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(i) If any resistance measurement is less than or equal to 1 megohms, prior to further flight, replace the fuel pump with a new fuel pump, in accordance with the applicable service bulletin. Prior to further flight following accomplishment of the replacement, repeat the insulation resistance test.

(ii) If any resistance measurement is greater than 1 megohms but less than 5 megohms: Repeat the visual inspection and insulation resistance test within 500 hours, or replace the fuel pump with a new fuel pump. Prior to further flight following accomplishment of the replacement, repeat the insulation resistance test.

(iii) If any resistance measurement is greater than or equal to 5 megohms, repeat the visual inspection and insulation resistance test within 5,000 hours or 18 months, whichever occur first.

(2) If any discrepancy is detected, prior to further flight, replace the fuel pump with a new fuel pump, in accordance with the applicable service bulletin. Prior to further flight following accomplishment of the replacement, perform an insulation resistance test of the fuel pump wiring, in accordance with the Accomplishment Instructions of the applicable service bulletin.

(i) If any resistance measurement is less than or equal to 1 megohms, prior to further flight, replace the fuel pump with a new fuel pump, in accordance with the applicable service bulletin. Prior to further flight following accomplishment of the replacement, repeat the insulation resistance test.

(ii) If any resistance measurement is greater than 1 megohms but less than 5 megohms: Repeat the visual inspection and insulation resistance test within 500 hours, or replace the fuel pump with a new fuel pump. Prior to further flight following accomplishment of the replacement, repeat the insulation resistance test.

(iii) If any resistance measurement is greater than or equal to 5 megohms, repeat the visual inspection and insulation resistance test within 5,000 hours or 18 months, whichever occur first.

(b) Within 10 days after accomplishing the initial visual inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and

negative findings) to the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

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

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

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

Issued in Renton, Washington, on August 7, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–20671 Filed 8–13–96; 12:33 pm]

BILLING CODE 4910–13–U

Office of the Secretary

14 CFR Part 255

[Docket No. OST–96–1145 [49812]; Notice No. 96–22]

RIN 2105–AC35

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of proposed rulemaking

SUMMARY: The Department is proposing to adopt a rule that would prohibit each computer reservations system (CRS) from adopting or enforcing contract clauses that bar a non-vendor carrier from choosing a level of participation in that system that would be lower than the carrier's level of participation in any other system. The Department believes that this rule is necessary to promote competition in the CRS and airline industries, since the contract clauses at issue appear to unreasonably limit an airline's ability to choose how to distribute its services through travel agencies. The Department will consider creating an exception from this prohibition so that a CRS could enforce such a clause against an airline that owns or markets a competing CRS. The Department is acting on a rulemaking petition filed by Alaska Airlines.

DATES: Comments must be submitted on or before September 13, 1996. Reply comments must be submitted on or before October 3, 1996. We are shortening the comment period because our decision on Alaska's rulemaking petition will resolve an existing controversy between Sabre and many of its participating airlines, including Alaska, and because our request for comments on Alaska's petition has already given the public an opportunity to comment on Alaska's proposal.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–96–1145 (49812), U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Travel agents in the United States largely rely upon CRSs to determine what airline services and fares are available in a market, to book seats, and to issue tickets for their customers, because CRSs can perform these functions much more efficiently than any other means currently available for gathering information on airline services, making bookings, and issuing tickets. Each of the CRSs operating in the United States is owned by or affiliated with one or more airlines, each of which has the incentive to use its control of a system to prejudice the competitive position of other airlines. We found it necessary to adopt regulations governing CRS operations, 14 CFR Part 255, in order to protect competition in the airline industry (and to help ensure that consumers obtain accurate and complete information on airline services). 14 CFR Part 255, adopted by 57 FR 43780 (September 22, 1992), after publication of a notice of proposed rulemaking, 56 FR 12586 (March 26, 1991). In adopting those rules, we followed the similar findings made by the Civil Aeronautics Board (''the Board''), the agency that formerly administered the economic regulatory provisions of the Federal Aviation Act (''the Act''), now Subtitle VII of Title 49 of the U.S. Code. 49 FR 11644 (March 27, 1984).

Like the Board, we based our adoption of CRS regulations primarily on our authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation under 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act, codified then as 49 U.S.C. 1381. 57 FR at 43789–43791.

Alaska Airlines has petitioned us to adopt a rule barring each CRS vendor (the owner of a system) from imposing contract terms on participating carriers that limit a carrier's ability to choose the level at which it will participate in a system. Alaska wished to consider lowering its level of participation in Sabre, the largest CRS, but Sabre claimed that its contract with Alaska barred that airline from reducing its level of participation in Sabre as long as it planned to continue participating in any other system at a higher level. Alaska contends that Sabre's contract clause—and similar clauses imposed by Worldspan and System One—are contrary to our policies on CRS and airline competition and should be proscribed (we will refer to these contract clauses as parity clauses). Alaska's proposed rule would protect non-vendor airlines (airlines holding no significant CRS ownership interest) but would not affect the participation obligations of vendor airlines under section 255.7(a) of our rules.

We issued a notice inviting comments on Alaska's petition. 59 FR 63736 (December 9, 1994). We received comments opposing the petition from American Airlines; two other CRS vendors, Worldspan and System One Information Management; the two major travel agency trade associations, the American Society of Travel Agents (ASTA) and the Association of Retail Travel Agents (ARTA); and three travel agencies. Alaska and Galileo International Partnership each submitted reply comments accompanied by a motion for leave to file the reply comments late. We will grant the motions.

As described below, our staff has met with two system owners—American Airlines and Galileo—and with Alaska and another carrier affected by Sabre's parity clause, Midwest Express Airlines.

In considering the issues raised by Alaska's petition, we are relying on the comments filed in response to the petition, as well as Alaska's own arguments in support of its rule proposal. However, we have also relied on our findings in our 1991–1992 rulemaking and in our last study of the CRS business, Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer

Reservation Systems, prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990) (Airline Marketing Practices).

We are proposing to adopt the rule requested by Alaska, since the vendor contract clauses at issue appear to us to be fundamentally inconsistent with our goals of eliminating unreasonably restrictive practices in the CRS business that limit competition. By denying each non-vendor airline an opportunity to change its level of participation in a system in response to the quality and price of the services offered by each vendor and the airline's own marketing and operating needs, the contract clauses unreasonably restrict competition in the CRS and airline businesses. However, an airline owning or marketing a system may choose to limit its participation in a competing system in order to make its own system more attractive to travel agencies.

We are asking for comments on whether the proposed rule should allow systems to use the contract clauses to deter such conduct by airlines that own or market a CRS.

Background

Four CRSs operate in the United States. The largest system, Sabre, is owned by the parent corporation of American Airlines. Apollo, the second largest system, is operated by Galileo International Partnership, which is owned by United Air Lines, USAir, Air Canada, and several European airlines. Worldspan is owned by Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a group of Asian airlines. System One was formerly controlled by an affiliate of Continental Air Lines, but recently Amadeus, a major European system, acquired control of the system.

With the exception of Southwest Airlines and several low-fare carriers, virtually all U.S. airlines have found it essential to distribute their services through each of the four CRSs operating in the United States due to two factors: the importance of travel agencies in the distribution of airline services and each travel agency's predominant use of a single system.

As we explained in our last CRS rulemaking, at least seventy percent of all airline bookings are made by travel agencies, and travel agencies rely almost entirely on CRSs to determine what airline services are available and to make bookings for their customers. Travel agencies rely so much on CRSs because of their efficiency. If travel agency offices commonly used several CRSs, travel agents would be able to obtain information and make bookings on a carrier even if the carrier participated in only some of the four systems. Each travel agency office, however, generally uses only one system for the great majority of its bookings.

An airline's ability to sell its services will be significantly impaired if its services are not readily available through a CRS used by a significant number of travel agents. If the airline does not participate in one system, the travel agents using that system can obtain information and make bookings on that carrier only by calling the carrier, which is substantially less efficient than using a CRS. The carrier's sales accordingly will be lower than they would otherwise be. Because of the importance of marginal revenues in the airline industry, a loss of a few bookings on each flight is likely to substantially reduce the airline's profitability. Finally, the airline could not practicably enter the CRS business on its own, for entry would be extremely costly and the airline would have difficulty obtaining a significant market share. 57 FR at 43782–43784.

Each carrier's need to participate in each system is reflected in the vendors' conduct and the terms imposed by each for participation in its system. Since a vendor has little need to compete with other systems for airline participants, the terms for airline participation are not significantly affected by market forces. Among other things, market forces do not discipline the booking fees charged by each system. 57 FR 43784–43785.

Since each system is entirely or largely owned by one or more airlines, each system's owners also have an incentive to use the system to prejudice the competitive position of competing airlines. Otherwise, CRS business practices would present little competitive concern. For example, the treatment of rental car companies and hotel companies by the CRSs had not led to any claims that the vendors' conduct was contrary to antitrust law principles. 57 FR 43784.

We recognize, however, that some recently-established low-fare airlines compete successfully while participating in none of the systems and that Southwest Airlines has succeeded without participating in any system except Sabre. Nonetheless we believe that the systems still have market power with regard to the major portion of the airline industry. Despite the growing number of low-fare airlines, the more established airlines provide the great majority of domestic airline service and virtually all of the international service operated by U.S. airlines. And even Southwest has found it necessary to participate in Sabre, albeit at a low level (formerly ''call direct'' and now Basic Booking Request).

Moreover, for a number of years, Southwest's refusal to participate in any system but Sabre did not entirely prevent travel agents using those systems from obtaining some information on Southwest's services and using the systems to write tickets on Southwest. In 1994, however, the other three systems—Apollo, Worldspan, and System One—changed their policies on the treatment of non-participating carriers in ways which made the sale of tickets on Southwest much harder for travel agents using one of those systems. While section 255.11 of our rules states that a system must treat all non-paying airlines the same, an airline that refuses to participate in a system has no right under our rules to obtain CRS services. Apollo, Worldspan, and System One each changed its policies on non-paying carriers so that travel agents using the system no longer had ready access to the schedules offered by any non-paying carrier and, as to two of the systems, could no longer use the system to write tickets on such carriers. As a result, agents using these systems could no longer efficiently serve customers who wanted to fly on Southwest. ASTA Answer at 2–3. This experience is relevant to several issues raised by Alaska's petition, as explained below.

Regulatory Background

Because each vendor has the power and the incentive to deny competing carriers access to its system except on terms which will prejudice the competitive position of those carriers, we and the Board determined that regulations restricting the discretion of CRS owners were necessary to protect airline competition and to ensure that consumers obtain accurate, complete, and unbiased information on airline services. 14 CFR Part 255, originally adopted by the Board, Regulation ER–1385, 49 FR 32540 (August 15, 1984), and readopted by us, 57 FR 43780 (September 22, 1992), after the publication of a notice of proposed rulemaking, 56 FR 12586 (March 26, 1991). Those rules regulate several aspects of CRS operations, including CRS contracts between vendors and participating carriers and between vendors and subscribers (subscribers are the travel agencies using a system by contract with the system), although they do not address the issue raised by Alaska's petition. When we readopted and modified those rules in 1992, one of our goals was to give carriers (and

travel agencies) a greater ability to choose alternative means of electronically transmitting information and making airline bookings. We reasoned that this would promote competition in the airline and CRS businesses. 57 FR at 43781, 43797.

To advance this goal, we adopted a rule (section 255.9) giving travel agency subscribers the right to use CRS terminals not owned by a vendor to access other systems and databases with airline service information. We expected that this rule would make it practicable for carriers to create direct links between the carriers' internal reservations systems and CRS terminals at travel agencies, which would enable carriers to bypass CRSs for some transactions. 57 FR at 43796–43798. We also prohibited certain types of contract clauses imposed by vendors on subscribers—rollover clauses, minimum use clauses, and parity clauses—that unreasonably restricted the agency's ability to use more than one system or to replace one system with another as its primary system. 57 FR at 43823–43824.

We are proposing to grant Alaska's rulemaking petition, because we believe that the airline parity clauses challenged by Alaska resemble the types of restrictive practices currently prohibited by our rules: the airline parity clauses seemingly lack a legitimate business justification, and they unduly restrict the business options of the firms on which they are imposed. While section 255.7 of our rules requires each airline with a significant ownership share in a CRS to participate in other systems at the level in which it participates in its own system, the rationale for that rule does not apply to non-vendor airlines.

The Vendor Contract Clauses

Sabre, System One and Worldspan, but not Apollo, each requires every carrier participating in the system to agree that it will participate at as least as high a level of service as it participates in any other system. These parity clauses do not excuse the airline from this requirement if the service offered by the system imposing the clause is inferior or more expensive than the similar level of service being purchased by the participating airline from another system (the Appendix to Alaska's Petition sets forth each system's contract terms on this issue).

Each CRS offers carriers several levels of participation in its system. The vendors obtain payments from participating carriers for CRS services by charging them a fee for each booking made through the system. The booking fee increases as the carrier's level of participation increases. For example, when Alaska filed its petition a carrier could participate in Sabre at the ''call direct'' level, where the system displayed the carrier's schedules but neither showed whether seats are available nor enabled the agent to make a booking on the carrier. When a carrier participates at the ''full availability'' level, travel agents can use the system to learn whether seats are available on the carrier and make a booking. When Alaska filed its complaint, Sabre's charge for the full availability level of service was $2.43 per segment booked and $1.25 per segment for the call direct level of service. Alaska Petition at 7.

After Alaska filed its petition, Sabre changed its participation levels by eliminating the call direct level and creating a new level of service, Basic Booking Request, which allows travel agents to make a reservation with the participating airline through Sabre; in contrast to the call direct level, the agent does not need to call the airline by telephone to make a booking. Sabre does not display availability information for carriers participating at the Basic Booking Request level, and any booking request made by a travel agent will take longer to process than it would for carriers participating at the full availability level. The fee charged the airline is $1.60 per segment booked. Alaska Reply Comments at 15.

In addition to the different levels of participation, systems separately offer different enhancements, such as the ability to display a seat map of the aircraft used for the flight being booked by a travel agent or to issue a boarding pass.

Almost all major carriers have participated in each system at the full availability level or at a higher level involving some form of direct access. However, in the past some U.S. carriers have limited their participation in a system in order to save money by avoiding the higher booking fees charged for higher levels of participation. Airline Marketing Practices at 68. Galileo represents that more than one hundred airlines participate in Apollo at a higher level than they do in Sabre. Galileo Comments at 3. Thus, while participation at some level in each system appears to be essential for almost all U.S. airlines, airlines may be able to compete without using all of the service features offered by a system.

If a system did not impose a parity clause, an airline that had no significant ownership affiliation with a CRS could participate at a lower level in that system and at a higher level in other systems. If an airline and its affiliates own five percent or more of the equity of one system, that airline, deemed a ''system owner'' under 14 CFR 255.3, must participate in each other system and its enhancements if the airline participates in such enhancements in its own system, if the other systems offer commercially reasonable terms for such participation. 14 CFR 255.7 (for the rationale for this rule see 57 FR 43800–43801). Nothing in our rules requires other airlines to participate in any system, although in some circumstances an airline's refusal to participate could be an unfair method of competition or a form of discrimination prohibited by the United States' bilateral air services agreements.

Alaska's Rulemaking Petition

Alaska's rulemaking petition stems from American's efforts to keep Alaska from lowering its level of participation in Sabre, the system affiliated with American, while maintaining a higher level of participation in other systems. American contends that the parity clause included in Alaska's participation contract with Sabre bars Alaska from reducing its level of participation in Sabre unless Alaska similarly reduces its level of participation in all other systems.

Alaska was considering reducing its participation in Sabre from the full availability level to the call direct level in order to reduce its costs. Alaska has generally become increasingly dissatisfied with CRS services, in part due to increased booking fees and in part due to the ways in which the airlines owning the systems allegedly discriminate against other airlines. Alaska Petition at 6–7. One of Alaska's major competitors, Southwest, participates in Sabre at a low level and thus incurs lower CRS costs than Alaska for Sabre bookings. As explained above, Sabre charges higher booking fees when a carrier participates in the system at a higher level. Alaska Petition at 7, 17.

Although Sabre has eliminated the call direct level and replaced it with the Basic Booking Request level, Alaska was still considering reducing its participation in Sabre. If Alaska participated in Sabre at the Basic Booking Request level, travel agents could not obtain availability information on Alaska through the CRS, but they could make bookings electronically. Alaska Reply Comments at 5, 7.

American told Alaska that reducing its participation level would violate the parity clause in Alaska's Sabre contract if Alaska continued to participate at a higher level in any other system, as Alaska had planned. American filed suit against Alaska to enforce the parity

clause. *American Airlines* v. *Alaska Airlines,* N.D. Texas Civ. Action No. 4–94CV–595–Y.

In addition to defending itself in that suit, Alaska has asked us to adopt a rule invalidating the parity clauses. Alaska's proposed rule reads as follows:

> No system may claim discrimination or require participating carriers which are not system owners to maintain any particular level of participation in its system on the basis of participation levels selected by participating carriers in any other system.

To support its petition, Alaska first notes that we adopted a rule, section 255.9, in our last CRS rulemaking which gives travel agencies the right to use their CRS terminals, if not owned by the vendor, to access other systems and databases. We thereby intended to give non-vendor airlines some ability to avoid CRS fees by creating direct links between travel agencies and their internal reservations systems. Alaska argues that the vendors' parity clauses will discourage carriers from creating direct links, by keeping them from reducing their level of participation in one system unless they do so in all systems, which would be too risky for most carriers. According to Alaska, if a carrier cannot reduce its booking fee costs by reducing its participation level, it will have little incentive to incur the costs of creating direct links between the agencies using that system and the carrier's own internal reservations system. Alaska Petition at 10–11.

Secondly, Alaska contends that the parity clauses limit a non-vendor carrier's ability to respond to unacceptable CRS service or pricing. If a carrier wished to reduce its level of participation in one system because the system's service was poor or too expensive, the carrier could not do so unless it simultaneously reduced its level of participation in other systems, even if the other systems' service and pricing were superior. Alaska Petition at 13. Alaska, however, has not alleged that Sabre's service and pricing are in fact inferior to the service and pricing offered by other systems.

In response to the argument of the parties opposing the petition that Alaska could avoid the effects of the Sabre clause by suspending entirely its participation in Sabre, Alaska claims it could never afford to do that. Alaska relies on travel agencies for 85 percent of its bookings, so it could not afford to take any action that would alienate the travel agency community. Alaska Reply Comments at 19–20; Alaska Reply Comments at 3.

Comments on Alaska's Petition

In response to our request for comments on Alaska's petition, we received comments opposing Alaska's petition from the three vendors that use parity clauses, the two major travel agency trade associations, and three travel agencies. Galileo filed a late comment supporting Alaska's petition. Our staff has met with American, Galileo, Alaska, and Midwest Express on the petition and American's enforcement of the parity clause earlier this year, as discussed below. Midwest Express supported Alaska's opposition to Sabre's parity clause.

American argues that its contract clause is necessary to prevent a carrier like Alaska from discriminating in favor of one system by reducing its level of participation in other systems, that Alaska unfairly intends to get the benefits of Sabre participation without paying for them, that travel agencies would be hurt if they could not make bookings on Alaska through their CRS, and that the contract clause prevents foreign airlines from discriminating against a U.S. system in favor of a system with which they have ownership or marketing ties. American also argues that the clause does not unfairly restrict Alaska's distribution options, since Alaska is always free to quit participating in Sabre. Furthermore, some of Alaska's major competitors participate in Sabre at the full availability level. And, according to American, the Sabre contract clause is similar to other contract clauses which the courts have found permissible under the antitrust laws.

Worldspan argues that we should not attempt to regulate the kind of contract issue raised by Alaska and that in any event no rule should be proposed until after the completion of our current investigation into the CRS business and airline marketing practices. Worldspan also asserts that the rule proposed by Alaska would harm the smaller systems, because carriers would be more likely to withdraw from those systems than from the largest two systems. In opposing Alaska's petition, System One Information Management focuses on the harm Alaska's business proposal would cause travel agencies and the competitive position of the smaller CRSs. System One Information Management further asserts that the parity clauses are consistent with antitrust principles and do not unduly restrict Alaska's response to unsatisfactory CRS service and fees.

While ASTA has supported rules giving travel agencies and airlines more flexibility in receiving and sending airline information, ASTA opposes Alaska's petition because travel agencies still must depend on the systems for airline information and booking capabilities. If an airline does not fully participate in the system used by an agency, the agency's alternatives for obtaining information and making bookings on that airline are quite burdensome, as shown by the recent experience of many agencies when the policy changes by Apollo, Worldspan, and System One made it more difficult for agents to book customers on Southwest. ASTA accordingly cannot support a rule which would make it easier for other airlines to reduce their level of participation in the CRSs.

Furthermore, ASTA points out that travel agencies would have a limited ability to switch to another system if a major airline in their region stopped fully participating in the agencies' CRS. Most travel agency contracts for CRS services have five-year terms, so an agency probably would be forced to continue using a system even if the airline's reduced level of participation substantially reduced the value of the system used by an agency. As a result, ASTA contends that we should allow travel agencies to cancel their CRS contracts on short notice if we grant Alaska's rulemaking petition.

ARTA similarly argues that Alaska's proposal would injure travel agencies. According to ARTA, over one-third of the agencies in the Pacific Northwest and Alaska—the regions where Alaska principally operates—use Sabre, and those agencies will be at a considerable competitive disadvantage if Alaska reduces its participation in Sabre.

Three travel agencies—Carlson Wagonlit Travel of Minneapolis, Austin Travel of Melville, New York, and Tyee Travel of Wrangell, Alaska—wrote to oppose Alaska's petition. Tyee Travel, a Sabre subscriber, states that Alaska's reduction in the level of participation in Sabre would seriously damage the agency's ability to operate and survive. Carlson Wagonlit Travel and Austin Travel contend that a rule allowing airlines to reduce their participation in one system would injure travel agencies.

Apollo Travel Services (ATS), which distributes Apollo in the United States, Mexico, and the Caribbean and manages the system's distribution in Japan, filed a comment opposing ASTA's requested rule giving travel agencies the right to terminate a CRS contract before it expires. ATS claims that its ability to offer travel agencies contracts with terms as long as five years gives it the ability to recover its costs over a longer period and thus enables it to offer lower prices to travel agencies. ATS would

have to increase its charges to travel agencies if subscribers had the freedom to cancel contracts before the end of their term.

No one else submitted comments to us on Alaska's petition until Sabre recently enforced the parity clause against many of the airlines participating in its system, as described next.

Sabre's Recent Enforcement of Its Parity Clause

While we were considering Alaska's petition, Sabre notified its participating airlines that Sabre was revising its contractual terms and that each participating airline had to sign the contract amendment. Sabre's letter to many of these airlines additionally stated that Sabre would eliminate the airline's services from Sabre's display on February 1, 1996, unless the airline upgraded its participation level in Sabre, since the airline allegedly was participating at a higher level in another system than it was participating in Sabre.

Two of the airlines receiving this letter were Alaska and Midwest Express, each of which uses Sabre as its internal reservations system. Since they are ''hosted'' in Sabre, they thought that Sabre provided its subscribers at least as much functionality for information requests and booking transactions on themselves as was provided by any other system. In their view, accordingly, they were already in compliance with Sabre's parity clause. They asked us to stop Sabre from compelling them to purchase additional services from Sabre, a demand that they estimated would raise their booking fee expenses by over ten percent. After meeting with these two airlines, Patrick V. Murphy, the Deputy Assistant Secretary for Aviation and International Affairs, wrote Sabre and obtained its agreement that Sabre temporarily would not compel either airline (or any other airline hosted in Sabre) to upgrade its participation level. Although Alaska and Midwest focused at the meeting on Sabre's demands that each airline upgrade its participation in Sabre, Alaska also noted that it was no longer considering reducing its level of participation in Sabre. Alaska still asked us to prohibit parity clauses, since it did not wish to be compelled by contract to buy CRS services that it preferred not to use.

Soon after Alaska and Midwest Express had presented their complaint, Galileo complained in writing to Mr. Murphy that Sabre's threats to participating airlines were causing some airlines to comply with Sabre's demands by reducing their level of participation in Galileo rather than increasing their level of participation in Sabre. Galileo thereafter filed a comment supporting Alaska's petition. Galileo complains that Sabre's parity clause restricts CRS competition, since the clause prevents airlines from choosing their participation level and other features in each system on the basis of price and quality. Since an airline's Sabre fee expenses will increase if the airline increases its participation level in Sabre, an airline will be reluctant to maintain a higher level of participation in Apollo (or another system) if the airline must then increase its participation level in Sabre and thereby incur higher CRS costs. As a result, Sabre's threats have forced some airlines to reduce the amount of services they are purchasing from Galileo, which reduces Galileo's revenues, even though those airlines would prefer to buy a higher level of CRS services from Galileo.

In response to Mr. Murphy's letter, American and Sabre met with him and Department staff members to discuss American's rationale for the parity clause. Sabre stated that it had begun requiring parity and non-discrimination clauses in its participation agreements with several European airlines, since the refusal of some European carriers to participate in Sabre at the full availability level had injured Sabre's marketing efforts with European travel agencies. Sabre also feared that some foreign airlines might otherwise deny commissions to travel agencies in the airlines' homelands if they used Sabre to make bookings on the foreign flag carrier. Within the past year Sabre has successfully invoked the parity clause against several foreign airlines that participated at a high level in a competing system marketed by those carriers while participating in Sabre at a relatively low level.

Although Sabre developed the parity and non-discrimination clauses to protect its ability to market its services in foreign countries, Sabre believes that a U.S. airline like Alaska with a large market share in some regions could distort CRS competition by reducing its level of participation in some systems but not others. If a carrier did that, travel agencies in regions where that airline was a major airline would be compelled to choose a system where the airline participated at a higher level. American claimed, for example, that Sabre would have to abandon the Seattle market if Alaska did not participate fully in the system.

In a later meeting with our staff on the issue, Galileo stated that four carriers had lowered their level of participation in its Apollo system due to Sabre's threats to enforce the parity clause and that Galileo believed more carriers would do so since Sabre had given a number of carriers more time to decide how to respond to Sabre's demands to either upgrade their participation in Sabre or downgrade their participation in Apollo. Galileo believes that it is a leader in developing higher-level functionality and that many airlines therefore will choose to participate in Apollo at a higher level than in other systems if they are free to do so.

The Need for a Rule Barring Airline Parity Clauses

After considering the comments, we have determined to propose the rule requested by Alaska. As shown in our last rulemaking (and in the Board's rulemaking), the CRSs have a substantial ability to impose onerous contract terms on participating airlines, for the systems have little need to compete for airline participants. Almost all major airlines are compelled to participate in each system, even if the CRS imposes unreasonable terms for participation. Thus a participating carrier has little, if any, bargaining power on contract issues like the airline parity clause demanded by Sabre.

We believe that the use of parity clauses should be resolved through a rulemaking proceeding, rather than through enforcement. Since three of the four CRSs in the United States use parity clauses, the question of the legality of their use raises an industry-wide issue more appropriately considered in a rulemaking proceeding. In a rulemaking all potentially interested persons can submit factual information and legal and policy arguments.

While we have been reluctant to regulate CRS contracts in detail, the parity clauses substantially—and unfairly—restrict a non-vendor airline's ability to choose the level at which it is willing to participate in a system. Under those clauses, each vendor in effect is stating that it refuses to do business with a customer unless that customer buys the same level of services from it that the customer buys from any competing system. Furthermore, the clauses used by some systems bar an airline like Alaska from reducing its level of participation even if the system imposing that requirement offers lower quality service or charges higher prices. If Worldspan's charges for participation at the full availability level, for example, were much higher than Apollo's charges for the same level of service, the Worldspan contract would still compel Alaska to maintain its Worldspan

participation at the full availability level, as long as Alaska participated at that level in Apollo.

The contract clauses, moreover, unreasonably restrict Alaska's ability to choose its participation level in different systems. Sabre's contract with Alaska, for example, gives Alaska only three choices: it can maintain its participation at the full availability level, since it participates in other systems at that level; it can maintain its participation at the full availability level in one or more of the other systems and withdraw entirely from Sabre; or it can reduce its level of participation in every system below the full availability level. Alaska thus cannot respond to its changing distribution needs by lowering its participation level in Sabre (and hence its costs) while maintaining its participation at the full availability level in one or more other systems.

Although the commenters claim that Alaska could easily resolve its alleged dissatisfaction with Sabre's full availability level service by withdrawing entirely from Sabre, see, *e.g.*, American Response at 16, Alaska explains that this is not a realistic option. Alaska depends on travel agency bookings for the great majority of its total revenues, and, if it withdrew entirely from Sabre, the many travel agencies using Sabre as their primary system would find it so difficult to obtain information on Alaska's services that its bookings from those agencies would fall sharply. Alaska Reply Comments at 7–8. We found in our last rulemaking that few carriers could afford to stop participating entirely in a system, since a carrier taking that action would lose a substantial portion of its bookings from that system's subscribers. 57 Fed. Reg. at 43783. None of the parties opposing Alaska's petition has shown that complete withdrawal from Sabre would be an acceptable business option for an airline like Alaska.

While complete withdrawal from a system is not a practicable option for a non-vendor airline, a reduction in its level of participation might be a reasonable business strategy. While no major airline except Southwest has chosen not to participate at all in one or more systems, some major airlines have limited their participation in CRSs. Airline Marketing Practices at 68. The parity clauses, as shown, unreasonably restrict an airline's ability to choose this option.

American's claim that complete withdrawal from a system is an acceptable alternative for a dissatisfied participating airline is inconsistent with American's other claim that parity clauses are needed to protect travel agencies from the loss of functionality in booking airlines important to an agency's business. Obviously travel agencies will become much more inefficient if such an airline withdraws completely from a system than if it lowers its level of participation in the system. Non-vendor airlines should be free to make their own decisions on their level of participation in each system. In making such decisions, those airlines will consider the impact of their choices about CRS participation on the travel agencies' ability to market their services.

Furthermore, the parity clauses discourage airlines from creating direct electronic links between their own reservations systems and travel agencies. As Alaska explains, if an airline otherwise willing to bear the costs of establishing such links still had to pay the costs of CRS participation at a high level, the airline would have less economic incentive to create direct links. Alaska Petition at 10–11. By discouraging airlines from creating direct links between travel agencies and their internal reservations systems, the parity clauses frustrate one of the major goals of our last rulemaking, making it possible for airlines and travel agencies to develop alternative means of transmitting airline information and making bookings. 57 FR at 43781, 43797. The parity clauses, moreover, reduce airline competition, since the carriers owning the systems are restricting other airlines from reducing their distribution costs by creating alternatives to full CRS participation. If other airlines could reduce their participation in one or more systems, they would reduce their booking fee costs. The parity clauses prevent airlines like Alaska from lowering their costs and improving their distribution methods by restricting their ability to choose the level of CRS services best suited to their needs.

In addition to injuring non-vendor participating airlines like Alaska, the parity clauses also injure CRS competition. As shown by Galileo's comments, a system offering more attractive prices and services may obtain less business than it otherwise would, because some airlines will be unwilling to purchase a higher level of that system's services when doing so will force them to increase their purchases from other systems, even if the latter offer lower quality services or charge higher fees.

Indeed, the parity clauses imposed on participating airlines are quite similar in effect to the parity clauses formerly imposed on travel agency subscribers. Those clauses required an agency to use a number of terminals for one system comparable to the number of terminals used to access other systems. In our rulemaking we found that the clauses discouraged agencies from using more than one system. We therefore prohibited such clauses. 56 FR at 12624–12625; 57 FR at 43826.

Finally, we doubt that firms in any competitive industry could unilaterally impose any similar requirement on their customers. While purchasers often agree with suppliers in competitive industries to requirements contracts or contracts requiring purchases in large quantities or over long periods of time, in those situations the purchaser typically obtains offsetting benefits, such as a guaranteed supply or a lower price. *Cf. Barry Wright Corp.* v. *ITT Grinnell Corp.*, 724 F.2d 227, 237 (1st Cir. 1983) (Breyer, J.). Here the commenters claim neither that participating airlines obtain any benefit from the clauses nor that such airlines have obtained other benefits in exchange for accepting the clauses.

Legal Authority for Adopting the Proposed Rule

Under 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (and codified then as 49 U.S.C. 1381), we may investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition in the sale of air transportation. That section, modelled on section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, does not confine unfair methods of competition to those practices constituting a violation of the antitrust laws. For example, we have the authority to ban practices well before they become serious enough to violate the antitrust laws, as the Seventh Circuit held when it affirmed the Board's adoption of CRS rules, *United Air Lines*, 766 F.2d 1107, 1114 (7th Cir. 1985):

> Although none of the airline owners of computerized reservation systems has a conventional monopoly position in the market for that service, and they are not accused of colluding, the Board found that some of them, anyway, had substantial market power. This finding * * * would bring their competitive practices within the broad reach of section 411. We know from many decisions under both that section and its progenitor, section 5 of the Federal Trade Commission Act, that the Board can forbid anticompetitive practices before they become serious enough to violate the Sherman Act.

We may therefore define a practice as an unfair method of competition and prohibit it without finding that it is in fact a violation of the antitrust laws. Nonetheless, we doubt that we could

prohibit a business practice on competitive grounds unless the practice is comparable to practices that would violate the spirit or the letter of the antitrust laws.

See, *e.g., E.I. Du Pont de Nemours & Co.* v. *FTC,* 729 F.2d 128 (2d Cir. 1984). Here we find that we may proscribe the parity clauses, because these clauses appear comparable to impermissible tying arrangements, violations of the essential facility doctrine, and attempts to monopolize the electronic distribution of information on airline services to travel agencies.

CRS Market Power. As the predicate for the findings that the contract clauses are similar to conduct prohibited by the antitrust laws, we find that each of the systems has market power, which the Supreme Court has defined as the power ''to force a purchaser to do something that he would not do in a competitive market,'' *Jefferson Parish Hospital* v. *Hyde,* 466 U.S. 2, 14 (1984); *Eastman Kodak Co.* v. *Image Technical Services,* 504 U.S. 451, 464 (1992).

Each vendor has market power over other carriers, because most carriers have no adequate alternative to the travel agency system for efficiently distributing their services, because travel agents have no alternative to CRSs for quickly and efficiently obtaining information and bookings on airline services, because the great majority of agencies use only one system (or predominantly only one system) at each location, and because entry into the CRS business under current conditions would be extremely difficult. As the Department of Justice explained in our earlier rulemaking, each system as a practical matter holds a monopoly over the carriers' access to its subscribers. See 57 FR at 43783–43784, quoting the Justice Department's comments on the advanced notice of proposed rulemaking at 10–11. Since the economics of the airline business make it difficult for a carrier to operate successfully if its services cannot be readily marketed by a significant group of distributors, each major airline must participate in each system. 57 FR 43783–43784.

And, as discussed above, we believe the systems' ability to impose the type of contract clause challenged by Alaska is itself evidence of their market power. We recognize, however, that each vendor has made major improvements to its system in recent years and that those improvements have benefited participating airlines by giving travel agents a greater ability to obtain current information and to complete bookings and other transactions without errors or delays. Nonetheless, the systems' development of improvements that benefit participating airlines along with travel agents does not disprove our finding that each system has market power. *Cf.* 57 FR at 43781.

As noted earlier, some recently-established low-fare carriers compete while participating in none of the systems. The systems nonetheless still have market power with regard to more established airlines. And even Southwest apparently has found it necessary to participate in one system, Sabre, albeit at a low level.

Tying Arrangements. Parity clauses are analogous to the kind of tying contracts prohibited by the antitrust laws, since they result from a system's use of its market power to force each participating airline to purchase services that it may not want as a condition to obtaining any services. The Supreme Court held in *Eastman Kodak Co., supra,* 504 U.S. at 461–462 (1992), that a tying arrangement—a seller's agreement to sell one product only on condition that the buyer purchase a second product from the seller (or promise not to buy the product from another seller)—is a *per se* violation of the Sherman Act if the seller has appreciable market power in the tying product and if the arrangement affects a substantial volume of commerce in the tied product. Tying arrangements are objectionable because they force buyers to accept conditions that they would not accept in a competitive market. See, *e.g., Jefferson Parish Hospital,* 466 U.S. at 12–15.

As a result of the parity clause, a system like Sabre will provide no CRS services to a participating airline unless the airline purchases at least as high a level of services from Sabre as it purchases from other systems. Sabre, for example, would not allow Alaska to buy any CRS services unless Alaska buys services at the full availability level, as long as Alaska participates at the full availability level of service in any other system. Sabre has taken that position even though Sabre marketed the call direct level—and now Basic Booking Request—as a separate product and sold it to other airlines, most notably Southwest.

Monopolization. A vendor like Sabre essentially holds a monopoly over the electronic provision of information and booking capabilities on airline services to its subscribers, as explained above. 57 FR 43783; ASTA Answer at 2–3. By requiring an airline to participate in Sabre at a higher level than it prefers, Sabre simultaneously discourages the airline from creating alternative electronic channels for information and bookings for Sabre subscribers and reduces its subscribers' incentives to use alternative channels. Sabre achieves this goal by requiring the airline to purchase a specified level of services from Sabre without regard to price or quality. As a result, the parity clause helps to maintain Sabre's existing monopoly over electronic access to its subscribers. The clause accordingly is comparable to conduct designed to maintain or create a monopoly, which would be unlawful under section 2 of the Sherman Act.

The Essential Facility Doctrine. Under the essential facility doctrine, a firm that controls a facility essential for competition must give its competitors access to the facility on reasonable terms. The firm's denial of access will violate section 2 of the Sherman Act. A facility is essential if it cannot be feasibly duplicated by a competitor and if the competitor's inability to use it will severely handicap its ability to compete. See, *e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.,* 472 U.S. 585 (1985); *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.,* 902 F.2d 174 (2d Cir. 1990), *cert. denied,* 111 S. Ct. 2041.

We concluded in our rulemaking that each of the systems is comparable to an essential facility. Each system must therefore offer airlines access to its services on reasonable terms. 57 FR at 43790. While the Ninth Circuit ruled in a private antitrust suit, *Alaska Airlines* v. *United Air Lines,* 948 F.2d 536 (9th Cir. 1991), that CRSs were not essential facilities, its decision appeared to be inconsistent with decisions by other circuits and in any event did not limit our authority to determine that CRS practices constitute unfair methods of competition which we may prohibit, as we explained in our last rulemaking. 57 FR 43791.

We believe that a system is denying access on reasonable terms if it makes a non-owner airline's participation contingent on the airline's agreement to purchase at least as high a level of services from that system as it does from any other system, without regard for the price or quality of the system's services.

The Commenters' Defenses for the Airline Parity Clauses

The commenters opposing Alaska's rulemaking petition argue that we should not prohibit parity clauses, since they allegedly promote CRS competition and benefit travel agencies. American, supported by Worldspan and System One Information Management, also contends that the clauses are consistent with the antitrust laws. We have carefully considered these parties' arguments, particularly those relating to the proposed rule's impact on travel

agencies, but we believe that these arguments do not outweigh the reasons for granting Alaska's petition. We will discuss first American's antitrust arguments and then the arguments that the rule would be harmful.

Before addressing these arguments, we will address the claims made by American and other commenters that the clauses prevent ''discrimination'' and ''free-riding'' by participating airlines. In making these claims, these commenters are effectively arguing that any firm choosing one supplier over another is ''discriminating'' against other suppliers and that a firm engages in ''free-riding'' by choosing to buy one level of service offered by a supplier rather than a more expensive level of service.

The discrimination claim is based on the theory that an airline like Alaska would choose to distort CRS competition by participating in a favored system at a higher level than it participates in one or more other systems. See, *e.g.*, American Response at 27. This could be of concern, of course, if the airline were trying to promote the market position of a system which it owned or marketed. That type of discrimination caused us to adopt the mandatory participation rule for carriers that directly or through an affiliate hold a significant ownership position in a CRS.

Alaska, however, neither owns any share of a CRS nor promotes the marketing of any CRS. Thus Alaska's so-called ''discrimination'' is only its wish to exercise the normal freedom of a purchaser in a competitive market to choose its suppliers and the quantity of goods or services that it will buy from each. This does not constitute discrimination.

In an effort to cast doubt on the legitimacy of Alaska's approach on reducing its distribution costs, American and System One Information Management accused Alaska of ''free-riding''. According to them, when Alaska planned to participate in Sabre only at the call direct level and to provide direct electronic links between Sabre subscribers and its internal reservations system, Alaska sought to use Sabre to provide schedule and fare information to travel agencies while avoiding any booking fee obligation, since the bookings would be made through the direct link. American Response at 13–14, 18; System One Reply at 3–4. This argument has an obvious flaw—Alaska must pay fees set by American for its participation in Sabre at the call direct level. According to Alaska, Sabre would then receive a booking fee whenever a travel agent used Sabre to issue a ticket on Alaska, even if the booking was initially made through a direct link. Alaska Reply at 16. Alaska therefore will not be getting a free ride. Indeed Alaska would only be doing what other airlines using the lower level of participation are already doing.

American's ''free riding'' argument is thus refuted by its own conduct. If American really thought carriers using the call direct level of participation were free riders—carriers obtaining valuable CRS services without paying their share of the system's costs—then American presumably would never have offered that level of service or would have charged carriers higher fees for using it.

Furthermore, while Sabre will not obtain the higher fee payable for participation at the full availability level if Alaska lowers its level of participation, Sabre also will not incur the cost of transmitting booking messages. The systems must believe there is a significant cost created by such message transmissions, since most U.S. systems now charge participating carriers fees based on separate transactions rather than a single fee per booking. Sabre in fact recently imposed a cancellation charge for all levels of participation except Basic Booking Request. As a result, the ''free riding'' claim is unpersuasive.

American's Antitrust Defense. In arguing that the parity clauses are consistent with the antitrust laws, American claims that the clauses are not unusual, that they prevent discrimination, and that they are pro-competitive. American Response at 24. American contends that the clauses are legitimate even if analyzed under our past findings on the CRS business and each vendor's market power, findings with which American disagrees. American Response at 24.

In defending the parity clauses, American primarily relies upon a decision holding that a monopolist health insurance company did not violate the antitrust laws when it required physicians to give its customers prices as low as those given customers of a rival insurance firm. *Ocean State Physicians Health Plan* v. *Blue Cross,* 883 F.2d 1101 (1st Cir. 1989), *cert. denied,* 494 U.S. 1027. On the theory that the Blue Cross conduct at issue represented a firm's efforts to prevent discrimination against it, American alleges that its parity clause is equally valid, since the clause is designed only to prevent discrimination against Sabre. American Response at 25–26. See also *Blue Cross & Blue Shield* v. *Marshfield Clinic,* 65 F.3d 1406, 1415 (7th Cir. 1995), *cert. denied,* 64 U.S.L.W. 3624 (March 19, 1996).

American's reliance on *Ocean State Physicians* appears to be misplaced. First, as Alaska has pointed out, the court's decision is inconsistent with the Justice Department's position in two recent cases that ''most favored nation'' clauses of the type at issue in *Ocean State Physicians* are anticompetitive because they reduce price competition. Alaska Reply Comments at 27, citing the proposed consent decrees in *United States* v. *Vision Service Plan* and *United States* v. *Delta Dental Plan of Arizona,* published respectively at 60 F.R. 5210 (January 26, 1995) and 60 F.R. 47349 (September 15, 1994).

Furthermore, the parity clauses are not like the ''most favored nation'' clause upheld in *Ocean State Physicians.* The court held that the conduct challenged in *Ocean State Physicians* was not exclusionary because it represented a buyer's insistence on obtaining the lowest price, a practice which tended to further competition on the merits. 883 F.2d at 1110. The court additionally noted that Blue Cross' conduct benefited consumers by giving them lower prices. 883 F.2d at 1111. *Cf. Blue Cross & Blue Shield, supra,* 65 F.3d at 1415. Here, in contrast, the parity clauses are imposed by sellers, not by buyers, and the clauses do not act as a means of providing low prices to the affected consumers, which here are the participating airlines. Instead, as shown, the clauses require airlines to participate at a high level in a vendor's system, merely because they participate in other systems at that level.

American's other antitrust arguments are also unpersuasive. American correctly notes that a firm with market power may legitimately seek to increase its market share; a firm will not violate the antitrust laws, for example, by developing new products. See, *e.g., Foremost Pro Color* v. *Eastman Kodak Co.,* 703 F.2d 534, 544–546 (9th Cir. 1983), *cert. denied,* 465 U.S. 1038. But a firm with market power may not strengthen its market position by engaging in coercive conduct. The parity clauses appear comparable to the kind of coercive conduct prohibited by the antitrust laws. In contrast, of course, American is free to continue improving Sabre without running the risk of antitrust liability.

Furthermore, while American claims the clauses are not unusual, it has cited no examples of similar contract restrictions in other industries.

The Commenters' Other Justifications for Airline Parity Clauses: CRS Industry Effects. In defending the parity clauses,

the commenters opposing Alaska's petition argue that the clauses promote competition, at least in the CRS and travel agency businesses, and benefit the public. We find these arguments unpersuasive.

Worldspan and System One Information Management claim the airline parity clauses promote CRS competition by keeping airlines from reducing their level of participation in the smaller systems, Worldspan and System One. According to their comments, if a smaller system could not impose contract terms preventing a participating airline from reducing its participation in that system, some airlines would reduce their level of participation in the smaller systems while maintaining a higher level of participation in the larger systems, Sabre and Apollo. The smaller systems would then be unable to offer subscribers as complete a coverage of the airline industry as the larger systems and would therefore lose subscribers to one of the larger systems.

However, the airline participants in a smaller system will continue purchasing a high level of service from that system if it offered attractive service and prices. Furthermore, even if an airline reduces its participation in a system, the system presumably would still provide information on the airline's schedules and other capabilities, such as the ability to write tickets through the CRS.

The smaller vendors' own conduct indicates that the loss of subscriber access to booking and ticketing capabilities on some airlines may not damage CRS competition. As discussed earlier, in 1994 System One, Worldspan, and Apollo each changed its policies on the treatment of carriers that chose not to participate in the system. As a result, their subscribers found it much more difficult to obtain information and make bookings on non-participating airlines. Southwest, a major airline in many markets, does not participate in these systems (but does participate in Sabre). Southwest accounts for more than ten percent of domestic enplanements, although its share of travel agency bookings for domestic travel is lower. The policy change by Apollo, Worldspan, and System One should have made those systems much less attractive than Sabre for many travel agencies. Even though Southwest, the major non-participating airline, continued to refuse to participate in these systems, the smaller systems—and Apollo—nonetheless went ahead with the change in policy. If the smaller systems were willing to take that action, we do not see how allowing airlines to reduce their level of participation in a system could cause them significant competitive harm.

The Commenters' Other Justifications for Parity Clauses: Travel Agency Effects. The parties opposing Alaska's petition generally argue that Alaska's proposed rule would harm many travel agencies. If a major airline decided to reduce its level of participation in a system, travel agencies using that system will have more difficulty obtaining information and making bookings on that airline through their system. If, for example, Alaska participated in Sabre at the Basic Booking Request level, a travel agency in Alaska or the Pacific Northwest using Sabre will have higher costs booking Alaska, an airline used by many of its customers, since Alaska bookings would take longer and since the CRS would no longer display availability information for Alaska. If Alaska reduced its participation in another system to the equivalent of the call direct level formerly offered by Sabre, an agency using that system could not book Alaska through the CRS at all and therefore would operate less efficiently than competing agencies using other systems.

The increased difficulty of obtaining information and conducting transactions would not matter much if travel agencies commonly used more than one system or if the vendors offered them short-term contracts. Short-term contracts would enable agencies to switch systems relatively soon after deciding that other vendors offered better service. However, the vendors have traditionally insisted on long-term contracts (usually five-year contracts) and on other contractual restrictions which discourage the use of multiple systems. In particular, most travel agencies obtain their CRS terminals from a vendor, and each vendor commonly bars its subscribers from using the terminals to access any other system or database. 57 F.R. at 43796, 43822–43824; *Airline Marketing Practices* at 85–91. While travel agencies would be reluctant in any event to switch systems or to use multiple systems due to the cost of doing so, *Airline Marketing Practices* at 26, 87, the vendor contract clauses additionally discourage travel agencies from switching systems or using several systems.

ASTA and ARTA specifically complain that a rule barring airline parity clauses will impair competition in the travel agency industry and injure the business position of many agencies. They base this contention on their expectation that the rule will cause some airlines to reduce their participation in some systems below the full availability level and thereby injure travel agencies by making their operations less efficient, as explained above. An agency using a system which no longer provides the ability to conveniently make bookings on a significant airline in the agency's business area will be less able to compete with agencies using other systems.

Tyee Travel, a travel agency in Wrangell, Alaska, complains that Alaska's proposed reduction in Sabre participation to the call direct level would be devastating for it. Tyee Travel has three years left on its Sabre contract and cannot switch to another system. It also makes many more bookings on Alaska Airlines than it does on all other airlines combined. If the agency were forced to make its bookings on Alaska by telephone, the agency's expenses would be much higher.

We are sympathetic to these concerns. However, we believe that travel agencies will ultimately benefit if airlines—and travel agencies—have a variety of options for electronic communications between airline reservations systems and airline and travel databases, on the one hand, and travel agencies, on the other hand. The rule proposed by Alaska will promote that goal in the long run, since it will make it easier for airlines to set up alternative methods of providing information and transactional capabilities to travel agencies. Although ASTA opposes Alaska's proposal, it agrees with the principle that travel agencies will benefit if they have more alternatives for obtaining travel information and making airline transactions electronically. ASTA Answer at 2. Alaska, moreover, states that its dependence on travel agencies for bookings will ensure that it takes steps to offset the impact of its reduced level of participation. Alaska Reply Comments at 2, 3. Alaska notes that 85 percent of its bookings came from travel agencies in 1994. *Id.* at 22, n. 9.

Insofar as travel agencies using Sabre are concerned, Sabre's replacement of the call direct level of service with Basic Booking Request will substantially alleviate the loss of efficiency when a major airline lowers its participation from the full availability level. If the airline participates at the Basic Booking Request level, an agent using Sabre can still obtain a display of the airline's schedules and can book the airline electronically. This is more efficient for travel agents than direct call would have been. Moreover, although not critical to our analysis, Alaska has advised us that it is not planning to reduce the level of its participation in Sabre, although it does wish to avoid purchasing some

features from Sabre that it apparently purchases from other systems.

In addition, travel agencies using Apollo, Worldspan, or System One recently had similar difficulties when each of those systems changed its policies on non-participating carriers and thereby made it harder for those agencies to obtain information and make bookings on Southwest. Southwest created direct electronic links with some of the affected travel agencies and has changed its procedures in other ways (for example, by creating ticketless travel) to offset the impact of its non-participation in the systems besides Sabre. Even so, Southwest's non-participation reduces the efficiency of travel agencies using Apollo, Worldspan, or System One. Nonetheless, we have never required non-vendor airlines to participate in CRSs, even though an airline's non-participation will decrease the efficiency of travel agency operations. We do not believe that we should allow a CRS to dictate a non-vendor airline's level of participation, even though that could benefit travel agencies using that system.

In any event, we currently believe that we should not protect the short-term interests of travel agencies by allowing vendors to restrict the distribution options of non-vendor airlines. We are also unwilling at this point to propose ASTA's solution for this problem, a rule giving travel agencies the right to terminate their CRS contract on short notice so they can switch to a system offering better service. We recognize that longterm subscriber contracts keep travel agencies from switching systems even if their existing system becomes less desirable for any reason. However, we considered this issue at length in our last rulemaking and determined that longer term contracts could be economically efficient and enable travel agency subscribers to obtain lower CRS prices. 57 FR at 43825. We prefer not to reopen that issue, at least not until after we complete our current study of the CRS business and related airline marketing issues.

Potential Unfair Conduct by Foreign Airlines. American has raised a legitimate concern over one possible effect of Alaska's rule proposal. American contends that the parity clauses increase CRS competition in international markets by keeping foreign airlines from reducing their participation in a U.S. system in order to promote the marketing of systems affiliated with those foreign airlines. As an example, American cites Avensa, a major Venezuelan airline, which is reducing its participation in Sabre to the call direct level while participating in a competing system at the full availability level, allegedly in order to promote the other system that Avensa is marketing in Venezuela. This will cause Venezuelan agencies to prefer the latter system over Sabre. American Response at 9–10.

When American met with our staff, it stated that Sabre has recently invoked the parity clause to resolve problems with some other Latin American airlines that were marketing competing CRSs. As in the Avensa example, the airlines participated in Sabre at a low level while participating at a substantially higher level in the systems they sponsored in their home countries. After Sabre invoked the parity clause, these airlines upgraded their participation level in Sabre.

We sympathize with this effect of the parity clause, for several foreign airlines in the past have limited their participation in a U.S. system in an apparent effort to deny the U.S. system a fair opportunity to compete in their homelands against systems they owned. The foreign airlines' conduct injured the competitive position of the U.S. airline marketing its system. See, e.g., Complaint of American Airlines against British Airways, Order 88–7–11 (July 8, 1988). While the past cases each involved a foreign airline with an ownership interest in the CRS, a foreign airline responsible for marketing a system in its homeland would have the same incentive to reduce its participation in the U.S. system. Although we may impose countermeasures under the International Air Transportation Fair Competitive Practices Act against a foreign airline whose discrimination denies a U.S. airline a fair and equal opportunity to compete, a vendor's use of contract terms preventing that kind of discrimination can be more effective and more likely to prevent disputes between the United States and foreign governments. 57 FR at 43819. Our mandatory participation rule, moreover, only covers airlines owning five percent or more of the equity of a system operating in the United States.

We are unwilling to deny Alaska's petition to preserve Sabre's ability to prevent unfair practices by foreign airlines, since the parity clauses injure CRS and airline competition within the United States. Nonetheless, allowing a system to enforce a parity clause against airlines that own or market a competing CRS may be reasonable. We ask for comments on whether the proposed rule should be modified to prevent the potential harm cited by American, perhaps by barring airline parity clauses except insofar as they apply to a carrier affiliated with another system as an owner or marketer. In addition, commenters should address whether the rule should exclude any airline with a CRS ownership interest rather than only system owners, carriers defined by our rules as owning directly or indirectly five percent or more of the equity of a CRS that operates in the United States.

Allowing a CRS to enforce a parity clause against an airline that owns or markets a competing CRS would be consistent with one of our rules, section 255.7(a). That rule requires carriers with a significant ownership interest in a U.S. CRS to participate in each other system and each of its enhancements (to the extent that such carrier participates in those features in its own system). Our adoption of a rule barring a system from contractually requiring airlines that neither own nor market a system to participate in the system at a higher level would not conflict with our existing mandatory participation rule, which covers only airlines with significant CRS ownership interests. American accordingly is completely wrong in suggesting that we excluded airlines with a small ownership share from the mandatory participation rule since the vendors through contractual means could prevent such airlines from discriminating against a system. American Response at 8. We instead stated that an airline with a small ownership share in one system should have little incentive or ability to limit its participation in a competing system in order to promote the marketing of the former system. 57 FR at 43795.

Evidentiary Basis for Our Proposed Rule

As noted above, we are relying in part on our last study of airline marketing issues, *Airline Marketing Practices*, and our findings in our last CRS rulemaking. We believe that the CRS and airline businesses have not changed in ways that would undermine the findings made in the study and the rulemaking that are relevant to this rulemaking. We note, moreover, that none of the comments in this proceeding contends that changes in these industries have affected our earlier conclusions. If any parties believe that developments over the last three years have affected those findings, they may, of course, say so in their comments.

We have also decided to act on Alaska's petition without waiting for the completion of our current study of airline marketing practices, the CRS business, and the rules adopted in 1992, which was begun by Order 94–9–35 (September 26, 1994). Since the parity

clauses seem to frustrate competition without a legitimate reason, we doubt that our ultimate decision on Alaska's petition would be affected by the findings of our study. Any party, of course, may present any relevant information to us in its comments.

Regulatory Process Matters

Regulatory Assessment

This rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits under section 6(a)(3) of that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

The proposed rule should benefit competition and innovation. It would give non-owner participating airlines a greater ability to choose the distribution methods that best meet their needs. The proposed rule also would not require any CRS to change its business methods in a way which impose a significant cost burden on the system. The rule would merely give participating carriers more flexibility in choosing among the participation levels offered by a vendor, although the exercise of that flexibility could reduce the revenues of a system. We doubt that our rule will significantly affect the vendors' revenues, since an airline lowering its level of participation in a system will still be paying fees to that system, and the system will incur lower costs serving that airline. It also seems unlikely that many airlines will choose to radically lower their participation level in some but not all systems.

If some airlines used the rule to reduce their level of participation in one or more systems, the travel agencies using those systems would be affected, since their operations would be somewhat less efficient. However, we expect that an airline reducing its level of participation will take steps to offset much of the impact on travel agencies. If a system offers a level of service like Sabre's Basic Booking Request, moreover, the agencies using that CRS could still make bookings through the CRS on the airline. The only agencies that would be seriously affected would be agencies in regions where the airline accounts for a substantial portion of the area's airline service. And again, we doubt that many airlines will choose to exercise this option to drastically reduce their level of participation. Alaska itself has decided not to reduce its level of participation in Sabre, although it prefers not to purchase some enhancements from Sabre that it may wish to purchase from other systems.

The Department does not believe that there are any alternatives to this proposed rule which would accomplish the goal of giving each participating carrier (other than carriers with a significant ownership interest in a CRS, which remain bound by section 255.7(a)) the ability to choose its level of participation in each system.

The costs and benefits of the proposed rule appear to be unquantifiable. The Department asks interested persons to provide information on the costs and benefits.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. Our notice of proposed rulemaking sets forth the reasons for our consideration of Alaska's rule proposal and the objectives and legal basis for our proposed rule.

The proposed rule will, as explained above, give more flexibility to smaller non-owner airlines by barring the use of airline parity clauses. When a system imposes a parity clause, the clause prevents an airline participating in the system from participating in that system at a lower level than its participation level in any other system. If we make the clauses unlawful, airlines could choose different levels of participation in different systems. Smaller non-owner airlines would then have a better opportunity to choose how they will distribute their services and thus a greater ability to control their costs.

Although the proposed rule would not directly affect travel agencies, it could affect the operations of smaller travel agencies. If an airline reduces its level of participation in one or more systems without reducing its level of participation in all of the systems, agencies using a system in which the airline reduced its level of participation would not be able to operate as efficiently as before, since they will be unable to obtain as much information and conduct transactions as efficiently as before. That loss in efficiency would be significant for an agency only if the airline provided a substantial amount of the airline service in the area where the agency conducts its business. Since the system almost certainly would still be able to provide some information and enable the agency to conduct some transactions through the system, the agency would still obtain some of the efficiency advantages of using a CRS as to that carrier. Furthermore, we do not expect many airlines to substantially reduce their participation level, so the likelihood that many travel agencies would be significantly affected appears small.

In addition, the proposed rule should encourage airlines and other firms to develop alternative means of transmitting information on airline services and enabling travel agencies to carry out booking transactions. In the long term these developments would benefit travel agencies.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

The rule proposed by this notice will have no 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 12812, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to amend 14

CFR part 255, Carrier-owned Computer Reservations Systems as follows:

PART 255—[AMENDED]

1.The authority citation for part 255 continues to read as follows: Authority: 49 U.S.C. 1301, 1302, 1324, 1381, 1502.

2. Section 255.6 is amended by adding paragraph (e) to read as follows:

§ 255.6 Contracts with participating carriers.

* * * * *

(e) No system may require a carrier to maintain any particular level of participation in its system on the basis of participation levels selected by that carrier in any other system.

Issued in Washington, DC, on August 8, 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–20737 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–62–P

14 CFR Part 255

[Docket No. OST–96–1145 [49812]; Notice No. 96–21]

RIN 2105–AC56

Fair Displays of Airline Services in Computer Reservations Systems (CRSs)

AGENCY: Office of the Secretary, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to adopt two rules to further ensure that travel agents using computer reservations systems (CRSs) can better obtain a fair and complete display of airline services. One proposed rule would require each CRS to offer a display that lists flights without giving on-line connections any preference over interline connections. The second proposed rule would require that any display offered by a system be based on criteria rationally related to consumer preferences. As an alternative to the latter proposal (or as an additional rule), the Department is also proposing to bar systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights. The Department believes that these rules are necessary to promote airline competition and ensure that travel agents and consumers can obtain a reasonable display of airline services. The Department is acting on the basis of informal complaints made by Frontier Airlines, Alaska Airlines, and Midwest Express Airlines.

DATES: Comments must be submitted on or before October 15, 1996. Reply comments must be submitted on or before November 12, 1996.

ADDRESSES: Comments must be filed in Room PL–401, Docket OST–96–1145 (49812), U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file twelve copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: Airline travelers in the United States usually rely upon travel agents to advise them on airline service options and to book airline seats. Travel agents in turn largely depend on CRSs to determine what airline services and fares are available in a market, to book seats, and to issue tickets for their customers. Travel agents rely so much on CRSs because they can perform these functions much more efficiently than any other means currently available. Each of the CRSs operating in the United States is owned by, or is affiliated with, one or more airlines, each of which has the incentive to use its control of a system to prejudice the competitive position of other airlines. We therefore found it necessary to adopt regulations governing CRS operations, 14 CFR Part 255, in order to protect competition in the airline industry and to help ensure that consumers obtain accurate and complete information on airline services. 14 CFR Part 255, adopted by 57 FR 43780 (September 22, 1992), after publication of a notice of proposed rulemaking, 56 FR 12586 (March 26, 1991). Our rules readopted and strengthened the rules originally adopted by the Civil Aeronautics Board (''the Board'') and published at 49 FR 11644 (March 27, 1984) (the Board was the agency that formerly administered the economic regulatory provisions of the Federal Aviation Act, now Subtitle VII of Title 49 of the U.S. Code).

One of our major goals in adopting the rules was to assure that CRS displays would provide an accurate and complete display of airline services when a travel agency customer requested airline information. When the CRSs were unregulated, each system biased its display of airline services in favor of its airline owner's flights in order to generate more bookings for its owner. Our rules, like the Board's rules, accordingly prohibit each CRS from using factors related to carrier identity in editing and ranking airline services in its displays. Section 255.4.

While our display rules also impose some other restrictions on CRS displays in order to reduce the likelihood of bias, our rules generally do not regulate the criteria used by each system to edit and rank the airline services shown in its displays. In particular, we have not prescribed the display algorithm that each system must use (the algorithm is the set of rules for editing and ranking airline services in a particular display). In our last CRS rulemaking we declined to adopt stronger rules on CRS displays, in part because we believed that the systems' competition for subscribers (the travel agencies using a CRS) would keep each system from offering irrational displays designed to gain additional bookings for its owner airlines.

Recent experience suggests that the systems' competition for subscribers may not adequately check the desire of the airline owners of each system to create displays that will increase their airline bookings, even if those displays list airline services in a way that is contrary to consumer preferences. We are therefore proposing to revise our rules on CRS displays. One rule would require each CRS to offer a display that does not give on-line connections a preference over interline connections. The other rule would require that any display offered by a system be based on criteria rationally related to consumer preferences. As an alternative to the latter proposal (or as an additional rule), we are also asking for comments on a possible rule prohibiting displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights.

In considering these issues, we are relying in large part on the findings made in our 1991–1992 rulemaking, in the Board's rulemaking, and in our last study of the CRS business, *Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems,* prepared by the Secretary's Task Force on Competition in the Domestic Airline Industry (February 1990) (*Airline Marketing Practices*). That study and our rulemaking notices present a detailed analysis of CRS operations and their impact on airline competition and consumers. We are proposing to impose additional requirements on CRS displays because our reexamination of CRS issues and further experience with

CRS practices have caused us to believe that further regulation is necessary, despite our finding to the contrary in the previous rulemaking.

We have also relied on the pleadings filed in Docket 48671 in connection with Galileo's use of its exemption authority to change the display of single-plane flights in a way that assertedly benefits the interests of Galileo's principal owners, United Air Lines and USAir, at the expense of competing airlines like Alaska Airlines and Midwest Express Airlines, and denies travel agents using Galileo and their customers a useful display of airline services.

Background

We have found it necessary to regulate CRSs because of their predominant role in the marketing of airline services to consumers. Travel agents sell about 70 percent of all airline tickets sold in the United States. Travel agencies generally hold themselves out as neutral sources of travel information rather than as promoters of the services of one or a few airlines, so travelers rely on them for impartial advice on airline service options. 57 FR at 43782.

To determine what airline services are available when a customer requests information, travel agents usually rely on a CRS, because the CRSs provide information on the services offered by the great majority of airlines more efficiently than any other source. 56 FR at 12587. Most travel agency offices, moreover, rely entirely or predominantly on one CRS rather than use multiple CRSs. 57 FR 43783.

Each of the four CRSs operating in the United States is owned by one or more airlines or airline affiliates. The parent corporation of American Airlines owns the largest system, Sabre. Apollo, the second largest system, is operated by Galileo International Partnership, which is owned by United Air Lines, USAir, Air Canada, and several European airlines. Worldspan is owned by Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a group of Asian airlines. System One is controlled by Amadeus, a major European CRS firm, in which Continental Air Lines has an ownership interest.

The editing and ranking of airline flights in creating CRS displays are important because a flight's display position affects the number of bookings made on the flight. No system can display all of the available airline services in most markets on a single screen, for a CRS can display only five or six flights on each screen. If a travel agent wants to see additional service options, the agent must call up additional screens of information. The CRS therefore must use some method for ranking flights.

Travel agents are more likely to book a flight when it appears on the first screen of the display, and the flight most often booked is the first flight shown on the first screen. The first flights displayed are booked more frequently in part because those flights are likely to be the flights that best meet the customer's needs, but, as the airlines owning the systems have long known, those flights will also be booked more often merely because of their better display position. 56 FR at 12608.

Given the importance of CRSs to airline marketing, the airlines owning each system have an incentive to use it to prejudice the competitive position of rival airlines. Downgrading the display position of the flights operated by competing airlines would be an effective method of distorting airline competition if there were no CRS rules. As the Board found, before CRS displays were regulated, each of the airline-owned systems biased its displays in favor of the owner airline. At least one of the systems, Apollo, was attempting to make its bias both more effective and less visible to travel agents. Systems sometimes used display bias to prejudice specific airline competitors as well. For example, Sabre had imposed a substantial display penalty on all of New York Air's flights in order to force New York Air out of one important American market. 56 FR at 11656, 12593. Consumers obviously suffer when a system hides or eliminates information on potentially attractive service options.

Regulatory Background: The Board's Rulemaking and Subsequent Events

The injuries caused consumers and airline competition by display bias were among the factors that caused the Board to adopt rules regulating CRS operations. In adopting its rules the Board relied primarily on its authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation under section 411 of the Federal Aviation Act, codified then as 49 U.S.C. 1381, since recodified as 49 U.S.C. 41712. 57 FR at 43789–43791. On review the Seventh Circuit affirmed the Board's prohibition of display bias (and its other CRS rules). *United Air Lines* v. *CAB,* 766 F.2d 1107 (7th Cir. 1985).

The Board's principal rule on CRS displays prohibited each system from using carrier identity as a factor for editing and ranking airline services. To reduce the likelihood of bias and incomplete or misleading displays of airline services, the Board adopted several other rules related to CRS displays. These rules required each system, among other things, to use a minimum number of connect points in constructing displays of connecting services for any market and, on request, to give participating airlines and subscribers a description of its display algorithms.

The Board determined that these rules were necessary because travel agencies and their customers could neither prevent the systems from offering biased displays nor offset the effect of bias. The airlines participating in a system—the airlines which paid fees in order to have their services displayed and available for sale through a CRS—also did not have the power to keep the systems from biasing their displays. 49 FR at 32543–32544, 32547–32548.

The Board's rules did not end efforts by the airlines controlling the CRSs to improve the display position of their own flights at the expense of the flights operated by competitors. First, the Board's rules applied only to each system's principal display and did not regulate other displays offered by a CRS. Some systems created biased secondary displays in order to regain the benefits of display bias. This caused the Department to obtain each system's agreement not to offer biased secondary displays. *Marketing Practices* at 81–82. We later amended the rules to extend the prohibition on display bias so that it barred biased secondary displays. 57 FR at 43802.

Another example of CRS manipulation involved flight times. Since the systems commonly ranked flights on the basis of elapsed time, some airlines allegedly began publishing schedules with unrealistically short elapsed times so that their nonstop flights would be displayed before the flights of airlines using accurate schedules. To stop this abuse each system agreed that it would no longer rank nonstop flights on the basis of elapsed time. *Airline Marketing Practices* at 83.

Despite the Board's prohibition of carrier-specific display bias and our later actions on displays, an airline with an ownership interest in a system could still give its own flights better display positions by choosing facially-neutral display criteria matching the predominant characteristics of its airline operations. While other airlines with similar operational characteristics would also benefit, those airlines that had chosen different strategies would suffer, although that result was not inevitably unfair. The Justice Department thus stated in its initial

comments in our last reexamination of the CRS rules, Comments of the Department of Justice on the Advanced Notice of Proposed Rulemaking at 17:

> [V]endors continue to manipulate their algorithms to improve their own flights' display relative to that of other carriers. The CRS vendors select for their algorithm the particular non-carrier-specific criteria, such as elapsed time, departure time, circuitry, and connect time, that due to differences in the route configurations and schedules of carriers, optimize the position of their airlines' flights in the display.

While the Board chose not to adopt detailed rules on CRS displays, European governments took a different approach when they adopted their own CRS rules. The European Union's rules, which were derived from guidelines adopted by the European Civil Aviation Conference (''ECAC''), impose more detailed regulations than did either the Board in its rulemaking or we when we revised the Board's rules in 1992. Insofar as displays are concerned, the European Union rules allow each system to offer only one display, the so-called ECAC display, unless the travel agency customer's needs require the use of a different display. The ECAC display lists all nonstop flights first, followed by single-plane flights (such as one-stop flights), with connecting services being shown last. The display may not use an on-line preference.

Regulatory Background: The Department's Rulemaking

Several years ago we held a proceeding to reexamine the Board's CRS rules. We determined to readopt them with several changes designed to promote competition in the airline and CRS businesses. 57 FR 43780 (September 22, 1992) and 56 FR 12586 (March 26, 1991). Like the Board, we adopted the CRS rules under our authority to prevent unfair methods of competition and unfair and deceptive practices in the marketing of airline transportation under section 411 of the Federal Aviation Act, now 49 U.S.C. 41712. 57 FR at 43789–43791.

Among the issues considered in our rulemaking were CRS display issues. Our notice of proposed rulemaking recognized, as the Department of Justice pointed out, that vendors could be choosing seemingly neutral display criteria in order to improve the display position of their own flights. However, we did not propose a rule prescribing the ranking and editing criteria that must be used in CRS displays. We doubted that there was a single best way for displaying airline services, and we agreed with the Justice Department that it would be inefficient for us to try creating the best possible display. We also believed that the vendors' ability to choose their display criteria was not causing significant competitive harm in the airline industry. 56 FR. at 12609.

While we did not propose a rule banning the use of an on-line preference, we invited the parties to comment on whether the preference should be banned. We noted that giving on-line connections a preference over interline connections was consistent with consumer preferences, since travellers generally preferred on-line service. 56 FR at 12609. Nonetheless, we also recognized that the systems' use of the preference could overstate travellers' usual preference for on-line service. We further noted that the systems' use of on-line preferences could put small airlines at a competitive disadvantage, 56 FR at 12610:

> The on-line preference may also unduly strengthen the vendor carriers' competitive position against smaller U.S. carriers, since the vendors have nationwide route systems with several hubs that enable them to offer on-line service to points throughout the nation. Smaller carriers, on the other hand, cannot match that service since they have few hubs and often operate only in one region.

In their comments on our notice of proposed rulemaking, some airlines argued that stricter display rules were essential because the systems' owners were using ranking and editing criteria that favored their own services at the expense of competing services.

ECAC and three airlines asked us to prescribe the algorithm that would be used for all CRS displays. We declined to take such action, largely on the basis of the reasoning set forth in the notice of proposed rulemaking. However, we also noted that the systems' competition for travel agency subscribers appeared to make additional display regulation unnecessary: ''[S]ubscriber demands seem to be causing vendors to offer travel agents alternative displays using some algorithms similar to European standards.'' 57 FR at 43803.

We also decided not to prohibit the use of an on-line preference. Despite our concern with the preference's potential impact on U.S. airline competition, no U.S. airline filed comments opposing the preference, and one smaller airline—Alaska Airlines—filed comments supporting the preference. 57 FR at 43804.

Finally, we declined to adopt the proposal by the Orient Airlines Association that we require each system to demonstrate that its ranking and editing criteria met consumer demands. We thought that that specific proposal was unwise, since it could require us to review and second-guess system decisions on display criteria. We also considered the proposal unnecessary, since it ''would be unlikely to lead to significant changes in the vendors' display algorithms.'' 57 FR at 43803. But, while we chose not to require vendors to demonstrate that they were basing their algorithms on consumer preferences, we expressly stated that the vendors would not have unlimited discretion to select display criteria. An airline dissatisfied with a vendor's algorithm could complain to us. 57 FR at 43803.

In addition, we found that our new rule on third-party hardware and software, § 255.9, would give travel agencies the ability to use software programs that could improve the quality of airline service displays. If travel agencies obtained programs that reconfigure the information provided by a system, they could create displays that might be more useful for their customers by better reflecting consumer travel preferences. 57 FR at 43797.

As explained below, recent developments in the CRS business have caused us to question the validity of our previous finding that no additional regulation of CRS displays was needed. But before explaining the basis for our doubts, we will describe the algorithms offered by each system.

With respect to one provision in the rules, we have allowed three of the systems to provide a display that differs from the rules' requirements. We have given several systems exemptions from one provision of our rules, § 255.4(b)(1), which requires that the system use the same algorithm for displaying services in all markets. Orders 90–8–32 (August 14, 1990) and 94–3–44 (March 24, 1994) (Sabre); Order 93–8–2 (August 13, 1993) (Galileo); Order 91–7–41 (July 26, 1991) (Worldspan). As a result, as described below, some of the systems use one algorithm for airline services within North America and a different algorithm for services not entirely within North America, such as transatlantic flights.

The Vendors' Current Algorithms

Sabre. Sabre offers two displays, a category display and an integrated display. Sabre's category display ranks airline services as follows: nonstop flights are listed first, direct flights (single-plane flights) are listed second, and connections are listed last. Sabre uses several factors to rank flights within each category, such as displacement time (the difference between the flight's departure time and the traveller's requested departure time). Sabre also uses elapsed time to a limited extent in ranking airline services other

than nonstop flights (and in selecting flights from the data base for the display), although flights whose elapsed time does not exceed the elapsed time of the fastest service in that category by more than 90 minutes are treated as having the same elapsed time as the fastest service. Sabre uses this display for both international and domestic services, and the display has used an on-line preference only for ranking connecting services within North America. April 20, 1994 letter of David Schwarte, Associate General Counsel, Docket 49318.

Sabre's other display—the integrated display—is available only if both the origin and the destination of the traveller's itinerary are within North America. Like the category display's algorithm, the algorithm uses factors like displacement time and elapsed time to rank flights and to determine which flights in the data base are displayed, but it does not automatically show connecting services after all nonstop flights and single-plane flights. The algorithm ranks each service on the basis of the penalty points assigned the flight on the basis of how well the flight satisfies the ranking criteria; for example, a flight with a departure time close to the traveller's requested departure time will receive fewer penalty points than a flight with a departure time that is farther away from the requested departure time. When a connecting service has fewer penalty points than a nonstop flight, the algorithm will display it before the nonstop flight. The integrated display uses an on-line preference.

Apollo. Apollo also offers travel agents in the United States two displays, the Basic Display and the U.S. ECAC Display. The Basic Display ranks flights by category—first nonstop flights, then single-carrier ''one-stop service'' (Apollo treats as one-stop service both one-stop flights and single connections between two nonstop flights), then interline ''one-stop service'', then on-line ''two-stop service'', then interline ''two-stop service'', then on-line service with three or more stops, and finally interline service with three or more stops.

Despite its name, Apollo's U.S. ECAC Display does not apply ECAC's display guidelines. Like the Basic Display, the U.S. ECAC Display displays flights by category: nonstop flights are listed first, then one-stop services (that is, one-stop single-plane flights and connections between two nonstop flights) are displayed, followed by two-stop services, with services involving three or more stops being shown last. This display does not use an on-line preference.

The display offered travel agents in Europe using Apollo's affiliated system, Galileo, complies with the ECAC display guidelines. Like Apollo's U.S. ECAC display, it lists all nonstop flights first, but, unlike the U.S. display, it then lists all single-plane flights before showing any connecting services.

Some airlines and many travel agents believe that both of the Apollo displays offered U.S. travel agents unreasonably rank airline services in order to give Apollo's airline owners a competitive advantage over other airlines. These airlines and travel agents consider the algorithms unreasonable because they give no preference to single-plane flights over connecting services and select flights from the database in a manner which gives a better display position to flights with less displacement time, as explained below. As a result, two airlines—Alaska and Midwest Express—and a major travel agency trade association have complained about the Apollo displays, as described below.

Worldspan. Worldspan also offers U.S. subscribers two types of displays, one referred to as an EEC display, the other referred to as a U.S. display. The so-called EEC display is consistent with the European CRS rules (and so has no on-line preference). The U.S. display that comes in two variants. In one variant of the U.S. display (and the only version available for airline services not entirely within North America), the display ranks airline services by category but uses an on-line preference.

In the other variant, which can be used only for services entirely within North America, the algorithm assigns penalty points to different services on the basis of such factors as displacement time, elapsed time (except that all nonstop flights are treated as having the same elapsed time), numbers of stops, and number of connections required. The algorithm uses an on-line preference.

System One. System One, like Worldspan, offers an ECAC display that is consistent with the European CRS rules. System One also offers a second display, the departure time display, which is also a category display. The departure time display ranks airline services in the following order: nonstop flights, then single-plane flights, then two-segment nonstop on-line connections, then two-segment nonstop interline connections, and so on.

Problems With Current CRS Displays

As noted, several airlines and a major travel agency trade association, the American Society of Travel Agents (''ASTA''), have complained about Apollo's display practices. Although these complaints only involve Apollo, we believe that a rulemaking is appropriate because other systems may be considering the adoption of similar display practices. Apollo's conduct suggests that travel agent and consumer desires for reasonable displays do not provide as much of a check on unreasonable CRS displays as we had thought and that systems may therefore create displays that serve the interests of their airline owners while possibly denying the system's users a reasonable ranking and display of airline services.

We will discuss first the on-line preference used by Apollo and other systems and then the problems caused by Apollo's other display practices.

The Systems' On-line Preference

Frontier Airlines has complained that Apollo's display algorithm gives an unreasonable preference to on-line connections and that this preference is worsened because connections between code-sharing partners (two airlines using one airline's code for both airlines' service) are treated as on-line connections. Frontier considered Apollo's display unfair because it injured Frontier's ability to compete in North Dakota markets. Frontier was offering jet service from North Dakota points to Denver in competition with a commuter airline operating under United's code. Since the commuter airline's flights were listed in CRSs under United's two-letter code, connections between the commuter airline and United at Denver, United's hub, were treated as on-line connections and given preference in Apollo's display over connections between Frontier and United at Denver. United had provided most of the nonstop service to points beyond Denver, so the poor display position given the connections between Frontier and United made it difficult for Frontier to obtain bookings from consumers who travelled to or from North Dakota points over Denver. Since Frontier, unlike the United commuter airline, used jet aircraft to serve the Denver-North Dakota routes, Frontier considered its service more attractive to travellers. According to Frontier, travellers nonetheless often were unaware of Frontier's service because Apollo's penalty for interline connections gave an unreasonably poor display position to connections over Denver between Frontier and United or another airline.

While a system's use of an on-line preference is usually consistent with the preferences of many travellers, an on-line preference also benefits the airlines with CRS ownership interests, since it reflects the characteristics of their

services. Each of those U.S. airlines is one of the largest U.S. airlines and operates a hub-and-spoke route system, that is, it operates a large number of flights connecting over a hub and relatively few point-to-point flights that do not either depart from or arrive at a hub. An airline operating a hub-and-spoke route system has little interest in capturing interline traffic, since its route structure and flight schedules are designed to keep travellers on its own connecting flights when nonstop and single-plane flights are unavailable. Such an airline benefits from CRS displays that show on-line connections before interline connections.

We recognize, as we have stated before, that consumers generally prefer on-line services over interline services. 56 FR at 12609. However, a system's use of an on-line preference also promotes the interests of its airline owners, and a system's preference may overstate the desirability of on-line service.

We believe that Apollo's treatment of interline connections, in combination with Apollo's other ranking and editing criteria, may cause consumer harm. The on-line preference used in the Apollo Basic Display makes it harder for travel agents to find interline connections, even though such connections at times may offer the best service for consumers, since the display shows all on-line connections in a category (for example, services involving a single connection) before displaying any interline connections in that category. Since consumers usually prefer on-line connections, giving on-line connections a preference in CRS displays will often be rational. In some markets, however, many consumers may consider an interline connection the best service. Frontier, for example, was offering service with jet aircraft, which many travellers prefer to the commuter aircraft operated by United's code-sharing affiliate (of course, other travellers may prefer the more frequent flights and on-line service offered by United's code-sharing partner). In addition, as we discussed in our last rulemaking, the systems' on-line preferences may well overstate the attractiveness of on-line connections. On-line connections should normally appear before interline connections in a display that uses elapsed time as a principal ranking factor, even without an on-line preference, because the airline offering on-line connecting service usually coordinates the flight arrival and departure times to minimize layover time at the intermediate airport. 56 FR at 12609. Since on-line connections do not necessarily offer the best service, however, the systems' use of algorithms that always give on-line connections a preference over interline connections will at times interfere with a travel agent's ability to find the best service for the agent's customers.

Apollo's Treatment of Single-Plane Flights

The other complaint involving Apollo's displays originated in the dissatisfaction of Alaska Airlines, Midwest Express Airlines, and the American Society of Travel Agents (''ASTA''), the largest travel agent trade association, with Apollo's treatment of single-plane services. In essence, Apollo has created displays that give a better display position to the hub-and-spoke operations of its major U.S. owners, United and USAir, and a poorer position to the services of carriers like Alaska Airlines and Midwest Express Airlines that do not operate a hub-and-spoke route system.

Apollo's algorithms often give an unreasonably low display position to single-plane flights that are more convenient for the traveller than connecting services given a better display position. This results from the undue importance given displacement time (the time difference between the traveller's requested departure time and the departure time of the flight being displayed) in ranking flights.

Although the complaint involves only Apollo's displays, the material submitted by vendors and airlines in our current CRS study suggests that another vendor may be considering creating a similar display, a factor that makes it appropriate to address this issue (and the issue informally raised by Frontier) through a rulemaking proceeding.

Apollo offers U.S. travel agents two different displays, the Basic Display and the U.S. ECAC Display. The algorithms for both displays build displays in groups (work areas or ''playpens'') of sixteen flight items (a flight item is a nonstop flight, a single-plane flight, or one of two or more connecting flights). In creating the group of sixteen flight items, Apollo proceeds first by category. Thus all nonstop flights are displayed before any other services. The next category includes both one-stop flights and single connections. Within each category the system uses only displacement time (the time difference between the traveller's requested departure time and the flight's departure time) in selecting flights from the database for each work area. In ranking the flight items within each work area, Apollo uses both displacement time and elapsed time in the Basic Display and only elapsed time in the U.S. ECAC Display.

The current Apollo algorithms replace algorithms that placed nonstop flights and single-plane flights in the top category and connecting services in a lower category. Since Apollo now puts single-plane flights in the same category as connecting services and uses a method for selecting flights from the database for each playpen that gives heavy weight to displacement time, Apollo's current displays give a relatively high display position to connecting services leaving close to the traveller's requested departure time and a low position to single-plane flights involving a greater displacement time, even if the latter involve less elapsed time.

When Apollo downgraded the position of single-plane flights, two airlines that operate a relatively large number of single-plane flights and do not have large hub-and-spoke systems, Alaska Airlines and Midwest Express Airlines, urged us to compel Apollo to restore its earlier placement of single-plane flights in the same category as nonstop flights. ASTA supported their request. They alleged that Galileo changed the displays in order to benefit its U.S. airline owners, United and USAir. Those two airlines rely on hub-and-spoke systems. In the markets they serve, some of their flights will inevitably have departure times close to any traveller's requested departure time and thus will gain a high display position solely because of the undue weight given displacement time when flights are selected from the database. Alaska and Midwest Express, on the other hand, operate a smaller number of single-plane flights that may not depart as close to a traveller's requested departure time but which would still be preferred by most travellers if their arrival times are comparable to those of the competing connecting services. Travellers tend to prefer the single-plane flights because they typically require less travel time than connecting services and because they avoid the inconveniences and risks of missed connections and lost baggage that can arise when travellers use connecting services. Alaska estimated that it may lose $15 million in potential revenues each year as a result of the new Apollo displays, while Midwest Express estimated that its annual revenue losses would equal several million dollars. *See* Order 94–8–5 (August 3, 1994) at 17.

As a result of the initial complaints made by Alaska and Midwest Express, we partially revoked the exemption that Galileo had obtained in order to make the Basic Display usable only for

services within North America, Order 94–8–5 (August 3, 1994). When Apollo responded to that order with display changes that generated further complaints from Alaska, Midwest Express, and ASTA, we required Galileo to provide information on its justification for changing the treatment of single-plane flights and on related issues. Order 94–11–9 (November 15, 1994).

We have tentatively determined that Galileo's ability and willingness to create seemingly unreasonable and unfair displays requires us to propose an additional rule on CRS displays. Our proposal, as explained below, would require CRSs to use editing and ranking criteria in their displays that reasonably reflect consumer preferences. Before discussing our proposal we will explain why Apollo's displays appear to be so troublesome.

First, the information submitted by the parties in Docket 48671 included the following four examples where Galileo's algorithm for the Apollo Basic Display produced an unreasonable display of airline services.

Seattle to Burbank. Alaska operated two one-stop flights that each had an elapsed time of about 3¼ hours and left Seattle at 1:40 p.m. and 4:15 p.m. However, if a travel agent requested a display of services in that market with a departure time of 3 p.m., the Alaska flights appeared only on the third screen after the display of seven on-line connections. The first screen showed three connections, one operated by Alaska and two by United. One of the two United connecting services left Seattle almost two hours before Alaska's 4:15 flight and arrived at Burbank sixteen minutes after the Alaska flight. Another United connection given a higher display position left Seattle more than one hour before the 4:15 Alaska flight and arrived at Burbank almost one hour later than the Alaska flight. October 5, 1994 Letter of Marshall Sinick.

San Francisco to New Orleans. A travel agent using the Apollo Basic Display with a requested departure time of 8 a.m. would not see an 8:40 one-stop Delta flight until the sixth screen; the earlier screens listed nineteen on-line connections, 18 of which had a longer elapsed time than the Delta flight. One of the connecting services listed on the third screen was an 8 a.m. connection over O'Hare that arrived at New Orleans more than one hour after the Delta flight. January 12, 1995 Letter of Marshall Sinick.

Milwaukee to Los Angeles. If a travel agent requested a display of service departing at 8 a.m., the first screen offered by the Apollo Basic Display showed two United connections that arrived at 11:52 a.m. and 12:49 p.m. and had elapsed times of 5:42 and 6:39, respectively. Midwest Express operated a single-plane flight in the market that arrived at 11:45 a.m., earlier than either United connection, and had a shorter elapsed time, 5:05. That flight, however, did not appear until Galileo's fourth screen, three screens after the less convenient connections. Midwest Express Comments (December 5, 1994) at 5.

Orange County to Seattle. Alaska operated a one-stop flight that departed at 1:59 p.m. and arrived at 5:42 p.m., while Reno Air operated a one-stop flight that departed at 2:10 p.m. and arrived at 6 p.m. An agent using the Apollo Basic Display to see what service was available with a 1 p.m. departure time would not see either of those flights until the fifth screen, after the display of over three screens of connecting services. The first connecting service listed consisted of a 1:30 p.m. United flight to Los Angeles connecting with a second United flight arriving at Seattle at 6:01 p.m. Among the other connecting services given preference over the two one-stop flights were connections over Salt Lake City and Phoenix, each of which departed from Orange County about one hour before either one-stop flight and arrived at Seattle at least 55 minutes after Reno's flight. Galileo Response to Order 94–11–9 (November 23, 1994).

In cases like these examples, the Apollo displays harm competition by favoring the services offered by the carriers that rely on hub-and-spoke networks, which are usually the largest carriers, and disfavoring the flights offered by airlines that do not rely so much on hub-and-spoke networks. When the better single-plane service is displayed after less convenient connecting services, airlines will have more difficulty competing for passengers on the basis of the merits of their service.

The displays also harm consumers and travel agents by making it difficult for agents to find single-plane flights that are likely to be more attractive for consumers than the connecting services given a better display position. ASTA, a major spokesman for travel agents, states that Galileo's displays ''make it harder for travel agents to find flights meeting the priority goals of air travel consumers.'' ASTA continues, ''We have never heard or seen an argument that would overcome the consumer benefits of one-stop single-plane service over on-line connections and * * * only a compelling reason (which is difficult to imagine) would warrant displacing such superior services in favor of on-line connections of longer elapsed time.'' According to ASTA, ''[t]ravel agents should not have to search through five screens of information to find a one-stop single plane service with superior elapsed times to intervening connections,'' and ''[t]his waste of time is a disservice to agents and their clients with no apparent offsetting benefit.'' Furthermore, when single-plane flights receive the poor display position cited in Alaska's examples, ''the existence of the one-stop flight may not become known to the agent at all.'' ASTA Reply (December 19, 1994) at 2–3, Docket 48671.

We directed Galileo to support its claims that it changed the Apollo displays in order to benefit travel agents and their customers. Order 94–1–9 (November 15, 1994) at 5. Galileo primarily claims that travel agents would be disadvantaged if all single-plane flights were listed before all connecting services, because an agent must then scroll through the complete listing of single-plane flights before seeing any connecting services, even though few, if any, of the single-plane flights leave at the time desired by the agency customer. Galileo Response to Order 94–11–19 at 8–9. Galileo, however, provided no evidence that travel agents complained when its displays listed all single-plane flights before displaying any connections. Moreover, as we noted earlier in that proceeding, few markets have many single-plane flights, according to the statistics provided by Galileo itself. Airlines operate an average of only 1.5 single-plane flights each day in each of the hundred largest domestic city-pair markets. Order 94–8–5 at 16. Since so few single-plane flights are offered in most markets, a travel agent wishing to see connecting flights instead of single-plane flights could easily get to the connecting service listings. Thus the earlier inclusion of single-plane flights in the same display category as nonstop flights could have caused little, if any, inconvenience for travel agents. While Galileo cites three markets—Washington, D.C.-San Francisco, Phoenix-Washington, D.C., and Boston-Greensboro—as examples of how its new displays are easier for travel agents to use, we believe these examples are unrepresentative and cannot show that the new displays' treatment of single-plane flights provides better displays in general.

Our Proposed Revisions to the CRS Display Rules

Given the apparent unreasonableness of Apollo's current displays, the possibility that other systems may adopt similar displays, and the likelihood that every system has created an algorithm designed in part to benefit the services of airline owners, we have decided to consider changes to the CRS display rules that should give non-vendor airlines (and travel agents) a greater assurance that they can obtain a fair and adequate display of airline services. At the same time, however, we do not want to limit each system's ability to offer different displays to travel agents, since travel agents are likely to disagree on

the factors that should be emphasized in editing and ranking airline services. Travel agents, moreover, must respond to the preferences of their customers, and different customers will consider different factors important in judging the quality of airline services. As explained, we also do not intend to tightly regulate CRS algorithms.

Nonetheless, even though travellers and their travel agents will disagree on which factors are the most important in choosing airline flights, we think that any display made available to travel agents should be based on rational criteria and that at least one display should rank airline services in a manner which does not favor the service characteristics of the biggest airlines, which happen to be the owners of each of the U.S. systems.

We propose to revise our current display rules in two respects. First, we propose to require each system to offer a display that does not use an on-line preference in ranking and editing connecting services. This display must be at least as easy to use as any other display offered by the system. We are proposing to make this display an alternative to the other displays offered by a system, not the primary or default display. Secondly, we propose to require that the criteria used by a system for editing and ranking airline services in any integrated display be rationally related to consumer preferences (under section 255.4(a), every integrated display offered by a CRS must comply with our display rules). As noted, however, we also request comments on a possible alternative (or addition) to this rule, which would prohibit systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights.

Our proposal to require each system to offer a display without an on-line preference will eliminate the ability of one of the large airlines owning a CRS to force the system to use an on-line preference in all displays of domestic airline services. That will benefit airlines like Frontier that depend more on obtaining interline passengers. As indicated, Apollo—the target of Frontier's complaints—already offers a display without an on-line preference, the U.S. ECAC Display. However, that display's seemingly unreasonable treatment of single-plane flights and its heavy reliance on displacement time as the basis for pulling services out of the data base make the display difficult to use. The rule will also require Sabre to create a new display without an on-line preference, if, as has been the case, Sabre's displays for services within North America all use an on-line preference.

The second rule—the requirement that a system's display criteria be rationally related to consumer preferences—should keep systems from offering unjustifiable displays. Although we are proposing to require the criteria used by a system in constructing an algorithm to be rationally related to consumer preferences, we do not intend to embark on an extensive review of CRS editing and ranking criteria. We would expect to take enforcement action under the rule only in cases where a system was using an algorithm that was likely to mislead a significant number of consumers by causing services that would meet the consumers' travel needs significantly better than other services to be displayed after the inferior services, if those criteria appear designed to improve the display position of the services of the system's airline owners.

This proposal should benefit smaller airlines like Alaska and Midwest Express that do not own a CRS and cannot cause a system to adopt algorithms using ranking criteria consistent with the nature of their own airline operations and inconsistent with the nature of competitors' airline operations. More importantly, the rule should benefit travel agents and their customers by barring systems from using algorithms that make it unreasonably difficult for travel agents to find the best service for their customers. That rule, if adopted, should force Apollo to change its algorithms, for we do not see in light of our current knowledge how that system's current displays could satisfy the rule's requirements.

We do not intend to use our proposed rule requiring displays to be based on rational criteria to second-guess all algorithm criteria that airlines find objectionable. We would likely find that a system had violated the rule only if the algorithm's unreasonable ranking of airline flights was likely to cause a number of travellers in a number of markets to choose flights that normal travellers (and travel agents) would consider significantly inferior to flights given a lower display position and if the display seemed designed to benefit the competitive position of the system's airline owners. The comments filed by U.S. and foreign airlines in our last major CRS rulemaking demonstrate that airlines often disagree over which characteristics of airline services should be emphasized in editing and ranking airline services. We probably would not consider complaints that an algorithm's ranking and editing criteria violate this proposed rule if the system using the criteria can make a showing that the challenged criteria are consistent with the preferences of a substantial portion of travellers. For example, we would not investigate complaints that an on-line preference violated the rule, since, as shown, an on-line preference is often (but not always) consistent with consumer preferences. Similarly, we would be unlikely to investigate a complaint that an algorithm was unreasonable where the displays did not seem to provide any competitive advantage for the airlines controlling the system. And on some issues any algorithm's choice is likely to be arbitrary—one possible example is the choice of a default time for use as the departure time when the travel agent does not specify a departure time in submitting a customer's request for flight information. Because no algorithm can result in a perfect display of airline services for every market, we would be satisfied if there is a rough correlation between consumer travel preferences and an algorithm's editing and ranking criteria. A system could use such evidence as travel agent and traveller surveys or the results of focus groups to demonstrate that the algorithm's criteria reflect consumer preferences, although we assume that less evidence would often be needed to show that the display was reasonable.

While we find it necessary to consider stricter rules for CRS displays, we believe it would be unwise for us to attempt to regulate CRS displays more closely. Each of the vendors currently offers different displays to its subscribers, and we are unwilling to reduce the choices currently available to travel agents. Moreover, as we stated in our last rulemaking, we doubt that we could create a display that would be the best possible display for all markets. 56 FR at 12609.

Our proposal to require that the editing and ranking criteria used by each algorithm be rationally related to consumer preferences reverses our decision in our last rulemaking on a similar proposal made by the Orient Airlines Association. Our experience with Apollo's displays has convinced us, however, that neither the vendors' competition for subscribers nor other factors may be strong enough to keep systems from creating unfair displays in order to increase their airline owners' airline revenues. We also doubt that our proposal, if adopted, would substantially increase our workload or our oversight of CRS operations.

As an alternative to, or in addition to, the proposal that editing and ranking criteria be based on consumer preferences, we are also considering the addition to the CRS rule of a specific prohibition against the kinds of unfair displays created by Apollo's algorithm. Under this alternative, the CRS rules would prohibit an algorithm that neither uses elapsed time as a significant factor in selecting service options from the database nor gives single-plane flights a preference over connections in ranking services in displays. Other CRS editing and ranking abuses, if not covered by the rule, could be pursued in an enforcement context under the general prohibition against unfair and deceptive practices and unfair methods of competition in 49 U.S.C. 41712.

Since, to date, the Apollo editing and ranking criteria are the only ones on which we have received specific complaints that they result in unfair displays, it may be wise to limit our proscription to the immediate and more clear-cut problem. This proposal would require Apollo to change its displays, since its current displays do not use elapsed time as a factor in selecting flights from the database yet give single-plane flights no preference over connecting services. If Apollo used elapsed time as a significant factor in selecting flights from the database, single-plane flights would receive a better display position since such flights generally require less travel time than connecting services. This proposal accordingly would no longer cause significantly inferior connecting services to be given a better display position than single-plane flights requiring substantially less travel time.

Comments on the merits and drawbacks of the combined requirements or each alternative, including the language of the specific prohibition against an algorithm that does not use elapsed time as a significant factor in selecting flights from the database and does not give single-plane flights a preference over connecting services, are invited.

Since each system provides a display without an on-line preference, at least for flights not entirely within North America, we doubt that requiring a display without an on-line preference would impose significant programming costs on the U.S. systems. Only Sabre apparently offers no display of North American services without an on-line preference. We also do not expect the proposed requirement that displays be reasonably related to consumer preferences to increase system costs significantly. Only Apollo currently offers displays that would seem to violate such a requirement, and Apollo's own willingness to change displays in recent years suggests that reprogramming would not be costly.

Alternatives to Rulemaking

As discussed above, we believe that vendors can use—and apparently have used—their discretion to create displays that injure consumers and airline competition. If consumers, travel agencies, and participating airlines could easily avoid the harm caused by these displays, we would not propose new rules on CRS displays. We tentatively find, however, that CRS users cannot readily do so.

Travel agents could overcome Apollo's unreasonable ranking of airline services by carefully searching through several screens for each market before recommending a flight to their customer (or by requesting a display of single-plane flights). Travel agents are often pressed for time, however, and do not believe they can afford to spend a lot of time looking for the best service when doing so involves looking at several screens or taking extra steps. *Cf. Airline Marketing Practices* at 69–70. And Apollo's treatment of single-plane flights at times causes one-stop flights to receive such a poor display position that even a diligent agent is unlikely to search long enough to find the flight, especially since the agent may not know that the single-plane flight even exists. ASTA Reply at 2–3.

Travel agents could also avoid the problem if they requested a display of direct flights only or asked for display with different departure times. Taking these steps, however, involves additional work that the agent prefers to avoid. Apollo's owners benefit from the displays precisely because they know that travel agents often will not undertake the additional work needed to offset the unreasonable ranking of flights offered by Apollo.

Travel agents also cannot avoid one system's poor displays by switching to another system that provides a more reasonable ranking of airline services. First, the CRS firms' contracts with travel agencies make it difficult for an agency to switch systems or to use an additional system. The contracts typically last for five years, and an agency terminating the contract before the end of the five-year term must pay substantial damages to the system. The systems' contracts use pricing formulas which give travel agencies lower prices for the CRS but discourage them from using additional systems. In addition, travel agencies often consider it necessary to use the system of the major airline in the agency's area, even if another system offers lower CRS prices or better service. *Airline Marketing Practices* at 24–26.

When we reexamined CRS regulation in our last rulemaking, we adopted a rule, section 255.9, which allows travel agencies to use third-party software and hardware in conjunction with CRS services, subject to certain conditions to protect the integrity of the system. This rule enables travel agencies to use programs that can reconfigure the system's information on airline services. Travel agencies dissatisfied with a system's display algorithms accordingly can purchase software that would create a more satisfactory display. 56 FR at 12605–12606. However, we have no evidence that many travel agencies have chosen to use programs that will create displays more useful for consumers.

More importantly, a system's use of an unreasonable and unfair display harms two other groups—participating airlines and consumers—who have no ability to offset the harm caused by unreasonable CRS displays. Travel agency customers rely on the travel agent to tell them what services are available, and other airlines have little control over the recommendations made by an agent. As we have found in our earlier examinations of the CRS business, most airlines find it essential to participate in each system and therefore have no ability to bargain for reasonable participation terms.

Legal Authority for Adopting the Proposed Rules

Our governing statute authorizes us to investigate and determine whether any air carrier or ticket agent has been or is engaged in unfair methods of competition or unfair or deceptive practices in the sale of air transportation. 49 U.S.C. 41712, formerly section 411 of the Federal Aviation Act (and codified then as 49 U.S.C. 1381). Our authority, modelled on the Federal Trade Commission's comparable powers under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, allows us to define practices that do not violate the antitrust laws as unfair methods of competition, if they violate the spirit of the antitrust laws. The same statutory provision gives us broad authority to prohibit deceptive practices in the sale of air transportation. In adopting the original CRS rules, the Board relied upon both its authority to prohibit deceptive practices and its authority to prohibit unfair methods of competition. The Seventh Circuit affirmed the Board's adoption of those rules under what was then section 411 of the Federal Aviation Act. *United Air Lines*, 766 F.2d 1107

(7th Cir. 1985). As a result, we may clearly regulate CRS display practices that create a risk that consumers will be deceived. 57 FR at 43791.

We are proposing these rules in order to prevent travel agency customers from being deceived and to keep the airlines controlling the systems from using their control over CRS displays to unreasonably prejudice the competitive position of other airlines. The proposed rules would promote airline competition by ensuring that CRS displays provide a reasonable and fair ranking of airline services. When a CRS offers a display that irrationally ranks airline services for the benefit of its airline owners, the CRS makes it more difficult for airlines to compete on the basis of price and service with the airlines controlling the system. The revenue loss estimates provided by Alaska and Midwest Express with respect to Apollo's changed displays, if accurate, additionally suggest that an unreasonable and unfair display can cause substantial damage to competing airlines.

When consumers book airline flights on the basis of information provided by an irrational display of airline services, they are likely to book inferior airline services because the display has hidden superior services. Our statute gives us the authority to prohibit conduct which has the potential to cause this kind of consumer deception.

We believe our tentative findings in this notice are sufficient to support our adoption of our proposed rules on CRS displays.

Regulatory Assessment

This rule may be a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that order. Executive Order 12866 requires each executive agency to prepare an assessment of costs and benefits under section 6(a)(3) of that order. The proposal is also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

The proposed rule should benefit airline competition and consumers. It will provide airlines a greater opportunity to obtain passengers on the basis of the quality of their service and their fares by reducing the possibility that unreasonable CRS display positions will determine the number of bookings received by an airline. In addition, by giving travel agents a better ability to obtain useful displays rationally related to traveller preferences, the rule would make travel agency operations more efficient. The rule would benefit consumers by making it more likely that travel agencies will recommend more convenient airline service. By promoting airline competition, the rule would produce additional savings and other benefits for consumers.

The Department does not have adequate information to enable it to quantify the potential benefits of the proposed rule. However, giving travel agents and their customers a better ability to find the best available airline service can result in substantial consumer savings, as the Justice Department noted in its comments in our last CRS rulemaking. 56 FR 12606. Moreover, Alaska and Midwest Express have estimated that Apollo's display reduces their revenues by millions of dollars each year. If their estimates are valid, the revised Apollo display is also causing many travellers to take connecting services instead of one-stop flights that may be more convenient.

While the Department expects the rule to provide significant benefits, it does not expect the rule to increase CRS costs significantly. The Department does not have sufficient information to estimate the systems' programming expenses for complying with the proposed rules. However, a rule requiring each system to offer a display without an on-line preference should not impose significant programming expenses on the systems, since each system currently has a display, at least for international services, that does not have such a preference.

A rule requiring systems to use rational criteria for editing and ranking flights would only impose significant costs on a system if an airline or travel agency subscriber submitted a justified complaint about its displays. If the complaint were invalid, it would likely be dismissed without a hearing. Only in cases where the display appeared to be unreasonable would the system be exposed to an enforcement proceeding, which could include a formal hearing, and to potential liability.

The other proposal, which would bar systems from using displays that neither use elapsed time as a significant factor in selecting flights from the data base nor give single-plane flights a preference over connecting services in ranking flights, should impose no costs on any system, except the cost of reprogramming displays that do not comply with the proposal. At this time Apollo appears to be the only system that would incur such costs. We doubt that the reprogramming costs would be significant.

The Department does not believe that there are any alternatives to this proposed rule which would accomplish the goal of giving each participating carrier a greater opportunity to have its services fairly displayed in CRSs.

The Department asks interested persons to provide information on the costs and benefits.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. Our notice of proposed rulemaking sets forth the reasons for our proposal of additional CRS display rules and the objectives and legal basis for our proposed rule.

The proposed rule would, as explained above, give smaller airlines a better opportunity to obtain a fair display position in CRSs, all of which are currently owned or affiliated with one or more large U.S. and foreign airlines. Smaller airlines would then be likely to obtain more bookings and therefore compete more successfully with larger airlines.

The proposed rule would also benefit smaller travel agencies by making it easier for them to serve their customers more efficiently and to give them better advice on airline service options.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

The Department certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub.L. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

The rule proposed by this notice would have no 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 12812, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservations Systems as follows:

PART 255—[AMENDED]

1. The authority citation for part 255 continues to read as follows:

Authority: 49 U.S.C. 1302, 1324, 1381, 1502.

2. Section 255.4(a) is revised to read as follows:

§ 255.4 Display of information.

[Alternative 1]

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) The criteria used by a system for editing and ranking airline services in any integrated display must be rationally related to consumer preferences. In considering whether an algorithm violates this provision, the Department shall consider, among other things, whether the editing and ranking criteria are likely to mislead a significant number of consumers by causing services that would meet the consumers' travel needs significantly better than other services to be displayed after the inferior services and whether those criteria seem designed systematically to improve the display position of the system owners' airline services at the expense of the services offered by other airlines.

* * * * *

[Alternative 2]

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) A system may not offer an integrated display that neither uses elapsed time as a significant factor in selecting service options from the database nor gives single-plane flights a preference over connecting services in ranking services in displays.

* * * * *

Issued in Washington, DC, on August 8, 1996.

Federico F. Peña,

Secretary of Transportation.

[FR Doc. 96–20736 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209827–96]

RIN 1545–AU22

Treatment of Section 355 Distributions by U.S. Corporations to Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations revising the final regulations under section 367(e)(1) with respect to section 355 distributions of stock or securities by domestic corporations to foreign persons. The IRS is also modifying the temporary regulations under section 6038B to provide that distributions described under section 367(e)(1) are subject to rules under section 6038B. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by November 7, 1996. Outlines of topics to be discussed at the public hearing scheduled for November 20, 1996, at 10 a.m. must be received by October 31, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (INTL 0020–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (INTL–0020–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Philip L. Tretiak at (202) 622–3860; concerning submissions and the hearing, Evangelista Lee at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed

rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax regs/comments.html. Comments on the collection of information should be received by October 15, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information under section 367(e)(1) is in § 1.367(e)–1T(c)(1)(ii), (2)(i)(C) and (3). The temporary regulations provide that in order for taxpayers to qualify for either the ''U.S. real property holding corporation exception'' or the ''publicly traded corporation'' exception, taxpayers must comply with the reporting requirements contained in § 1.367(e)–1T(c)(1)(ii) and § 1.367(e)–1T(c)(2)(i)(C), respectively. The temporary regulations also modify the reporting requirements under the ''gain recognition agreement'' exception (§ 1.367(e)–1T(c)(3)). Under the temporary regulations, the controlled corporation, in addition to the distributing corporation, must sign the gain recognition agreement (§ 1.367(e)–1T(c)(3) (ii)(F) and (iii)), extend the statute of limitations accordingly (§ 1.367(e)–1T(c)(3) (ii)(F) and (iv)), and annually report its distributees to the distributing corporation but not the Service (§ 1.367(e)–1T(c)(3)(v)(B)). This information is required by the IRS as a condition for a taxpayer to qualify for an exception to the general rule of taxation under section 367(e)(1), and to avoid the penalties contained under section 6038B. This information will be used to determine whether a taxpayer properly qualifies for a claimed exception. The respondents generally will be U.S. corporations, probably subsidiaries of foreign multinationals, that are either distributing another corporation or being distributed under section 355, pursuant to a corporate restructuring.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Estimated total annual reporting burden: 2,124 hours. (This equals the sum of (i) the prior burden of 1,604 hours, and (ii) the additional burden of 520 hours contained in the new regulations.) The estimated annual burden per respondent varies from 1 hour to 8 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 462.

Estimated annual frequency of responses: Once (in the case of taxpayers that qualify for the U.S. real property holding company exception and the publicly traded company exception). Annually (in the case of taxpayers that qualify for the gain recognition agreement exception).

Background

The temporary regulations published in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR part 1) under section 367(e)(1). The temporary regulations under section 367(e)(1) contain rules relating to the distribution of stock or securities under section 355 by a domestic corporation to a person that is not a U.S. person.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the reasons for the modifications to the final regulations contained in the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect large multinational corporations with foreign shareholders. The regulations do not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Notice of Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 20, 1996, at 10 a.m. in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by November 7, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 31, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Philip L. Tretiak of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.367(e)–1 is added to read as follows:

§ 1.367(e)–1 Treatment of section 355 distributions by U.S. corporations to foreign persons.

[The text of this proposed section is the same as the text of § 1.367(e)–1T

published elsewhere in this issue of the Federal Register].

Par. 3. Section 1.6038B–1, as proposed on May 16, 1986, at 51 FR 17990, is amended by revising the second sentence of paragraph (b)(2)(i) and adding the text of paragraph (e) to read as follows:

§ 1.6038B–1 Reporting of transfers described in section 367.

[The text of proposed paragraphs (b)(2)(i) and (e) are the same as the text of § 1.6038B–1T (b)(2)(i) and (e) published elsewhere in this issue of the Federal Register].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–20631 Filed 8–9–96; 12:19 pm]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 701

Postal Electronic Commerce Service

AGENCY: Postal Service.

ACTION: Proposed rule electronic postmark test; request for comments.

SUMMARY: The United States Postal Service is developing ''Postal Electronic Commerce Services'' that will provide security and integrity to electronic correspondence and transactions, giving them attributes usually associated with First-Class Mail. As part of this effort, the United States Postal Service is testing a limited prototype of an Electronic Postmarking Service that will offer customers a third-party validation of the time and date that an electronic mail document was received by the Postal Service, and validate the existence of a document by ensuring that it was not changed after its handling by the Postal Service. The test is intended to be concluded within 60 days of its start, although it may be extended. To provide guidance for implementing the test, the Postal Service is proposing to add new regulations to title 39 of the Code of Federal Regulations.

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Written comments should be directed to the Manager, Electronic Commerce Services, Room 5636, 475 L'Enfant Plaza, SW., Washington, DC 20260–2427. Copies of all written documents will be available at that address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Leo Campbell (202) 268–6837.

SUPPLEMENTARY INFORMATION: To further its mission of ''binding the Nation together through the correspondence of the people,'' 39 U.S.C. 101, the United States Postal Service is developing services which, through an extension of its traditional paper mail services, will enable and enhance the development of commerce by electronic means. These ''Postal Electronic Commerce Services'' will provide security and integrity to electronic correspondence and transactions, giving them attributes usually associated with First-Class Mail. As a first step in this effort, the Postal Service is testing a limited prototype pilot of an ''Electronic Postmarking Service.'' Under this new service, the Postal Service will apply a trusted time and date stamp to a document that has been electronically submitted to the Postal Service (''Electronic Postmark''), and then digitally signs the document with a Postal Service private key (defined by a CCITT×.500 § 509 Version 3 certificate). This Electronic Postmark provides evidence of the document's existence at a specific point in time, allows any subsequent change in the document to be identified, and shows that the Electronic Postmarked version of the document was no longer in the possession of the originator at the time of marking.

This Electronic Postmark is a valuable third-party validation of the official character of some documents. For users of electronic commerce, the Electronic Postmark is a way to send important information in a manner that combines the security of postmarked paper with the speed and convenience of an electronic network. Further, the Electronic Postmark, if offered in combination with a public key infrastructure, can be used to validate the digital signature of a sender of documents. At this time, this certification capability is an additional service that the Postal Service will offer only in the event that there is clear demand from its customers.

Although the prototype system for the Electronic Postmark is still in development, it will be FIPS 140–1 complaint and will incorporate U.S. Postal Service Software Process Standards and Security Management Procedures. The Electronic Postmark will use Digital Signature Standard (DSS) as the signing algorithm. Future implementations may incorporate additional or different algorithms. For the prototype test, the service will be provided by contract with an Authorized Computer Service Provider.

This prototype pilot test is intended to last 60 days, although it may be extended if necessary to achieve more complete test results.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. §§ 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. § 410(a), the Postal Service invites public comment on the following revisions to the Title 39 of the Code of Federal Regulations.

List of Subjects in 39 CFR Part 701

Communications, Electronic Commerce Services, Postal Service, Telecommunications.

It is proposed that chapter I of title 39 be amended as set forth below.

SUBCHAPTER I—ELECTRONIC AND COMPUTER-BASED SERVICES

Part 701 in Subchapter I will be added to read as follows:

PART 701—POSTAL ELECTRONIC POSTMARK

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011.

§ 701.1 Policy and objective.

The Postal Service seeks to offer Electronic Postmark Services that will offer Senders of Messages a third-party validation of the time and date that the Message was received by the Postal Service, and that will validate the existence of the Message by enabling Recipients to determine whether it was changed after its handling by the Postal Service.

§ 701.2 Trial period.

The Electronic Postmarking Services (defined in § 701.4) are being provided via a prototype system and will be made available to selected Senders as part of a pilot test that is intended to be concluded within 60 days of its start, although it may be extended if necessary to achieve more complete test results. The Regulations in this part will govern that pilot test.

§ 701.3 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Authorized Computer Service Provider* means a third party authorized by the Postal Service to accept and process Messages to be Electronically Postmarked and to forward the Postmarked Messages to the Recipient(s).

(b) *Authorized Value-Added Network* means a private computer-based value-added network designated by the Postal Service as authorized to carry Messages to the Postal Service for Electronic Postmarking.

(c) *Certificate* means a computer-based record that identifies the Postal

Service public key to be used for purposes of authenticating Postal Service Electronic Postmarks. The certificate will be in CCITT X.500 § 509 version 3 format.

(d) *Digital Signature* means a transformation of a Message using the Digital Signature Standard (DSS) and the DSA algorithm that allows recipients of the Message to authenticate the Message and determine whether the Message has been altered since it was received by the Postal Service.

(e) *Digitally Sign* means to apply a Digital Signature to a Message.

(f) *Electronic Address* means an alphanumeric or other designation corresponding a location on a computer network.

(g) *Electronic Mail Software* means any commercially available software product capable of sending and receiving electronic mail Messages.

(h) *Electronic Postmark* means data incorporated within a Message by the Postal Service that includes the following information:

(1) Postal Service branding.

(2) Date and time in Greenwich Mean Time (GMT) down to the second the Message was received by the Postal Service Mail Processor, as determined by the Mail Processor's internal clock.

(3) Postal Service Certificate serial number.

(4) Postal Service's distinguished name.

(5) Postal Service's Digital Signature consisting of the DSA R component and the DSA S component.

(i) *Mail Processor* means the computer system operated by an Authorized Computer Service Provider that is designed to handle the processing of Messages intended to be Electronically Postmarked in accordance with this Regulation.

(j) *Message* means any data in electronic machine-readable form directed to one or more Electronic Addresses to which it can be communicated via a computer network. A ''Message'' is not a ''letter'' for purposes of part 310.

(k) *Postmark Address* means the e-mail address to which a Message must be sent in order to obtain an Electronic Postmark.

(l) *Postmarked Message* means a Message, submitted to the Postal Service by a Sender in accordance with these Regulations, to which an Electronic Postmark has been added to the body of the Message as text, and which is attached to another Message containing a graphical representation of the Electronic Postmark.

(m) *Postmark Processor* means the computer system operated by or on behalf of the Postal Service for the purpose of applying an Electronic Postmark to a Message.

(n) *Recipient(s)* means the person(s) designated by an Electronic Address in a Message prepared by the Sender to receive the Electronic Postmarked Message.

(o) *Sender* means an individual or entity that submits a Message to the Postal Service via an Authorized Value-Added Network for Electronic Postmarking under part 701.

(p) *USPS Mail Reader* means software developed or licensed by the Postal Service that enables a Recipient to view an Electronic Postmarked Message, view the Electronic Postmark, and authenticate the Electronic Postmark for such Message.

§ 701.4 Description of Electronic Postmark Services.

(a) The Postal Service will provide the following Electronic Postmark Services for Messages sent to the Postmark Address at its Mail Processor via an Authorized Value-Added Network:

(1) The Postal Service will apply an Electronic Postmark to the Message using a private key corresponding to the public key specified in its Certificate.

(2) The Postal Service will forward the Postmarked Message to the recipient(s) designated by the Sender, using the same Authorized Value-Added Network from which the Message was originally received.

(b) The Electronic Postmarking Services will be available on demand, on a 24-hour, 7-day-a-week basis, subject to equipment, software, and communications problems.

(c) The Electronic Postmarking Services do not include any undertaking by the Postal Service to deliver Messages to any intended Recipient. The Postal Service's obligation is limited to communicating the Electronic Postmarked Message, using each Recipient's Electronic Address as specified by the Sender, to the Authorized Value-Added Network from which it was received, for further communication to the intended Recipient by such Authorized Value-Added Network. The Postal Service shall have no obligation or liability with respect to the performance of any Authorized Value-Added Network.

(d) The Postal Service may subcontract the foregoing Electronic Postmark Services to an Authorized Computer Service Provider.

§ 701.5 Requirements for submitting messages to be postmarked.

Any person whether or not a U.S. citizen and whether or not located in the United States may submit a Message to the Postal Service to be Electronically Postmarked in accordance with these Regulations, provided the following requirements are met:

(a) the Message must be in the format prescribed by § 701.6;

(b) the Message must be submitted to the Postmark Address at the Postal Service Mail Processor via an Authorized Value-Added Network; and

(c) the Sender must have an account with an Authorized Computer Service Provider for the purpose of obtaining Electronic Postmarks, and must pay the fee provided in § 701.8 to such Authorized Computer Service Provider.

§ 701.6 Message format.

(a) Messages shall be submitted electronically in a binary-encoded file.

(b) Messages must include: (i) the Postmark Address at the Postal Service's Mail Processor; (ii) a valid account number against which the Authorized Computer Service Provider may charge applicable fees for Electronic Postmarking Services, and (iii) the Electronic Addresses of any Recipients to whom the Electronic Postmarked Message should be forwarded after the Electronic Postmark is applied.

(c) For the purposes of this test, the specific format shall be specified by the Authorized Computer Service Provider.

§ 701.7 Authorized Value-Added Network and Authorized Computer Service Provider.

(a) All Messages to be Electronically Postmarked must be submitted to the Postmark Address through an Authorized Value-Added Network, and the corresponding Electronic Postmarked Message will be forwarded to the Recipient(s) by the Postal Service using the same Authorized Value-Added Network. Senders must make necessary arrangements with the Authorized Value-Added Network.

(b) The Authorized Computer Service Provider is responsible for issuing account numbers, billing Senders for the Electronic Postmarking Services, and supplying Senders and Recipients with the USPS Mail Reader software.

(c) The Authorized Computer Service Provider and Authorized Value-Added Networks may by contract or otherwise specify other protocols, formats, procedures, terms, conditions, and requirements not inconsistent with these Regulations with respect to the generation, structure, submission and receipt of Messages, the assignment, use, and authentication of account numbers, and the payment of charges assessed against account numbers.

(d) A list of Authorized Computer Service Providers and Authorized

Value-Added Networks may be obtained by contacting the Postal Service via electronic mail at: LCAMPBEL@EMAIL.USPS.GOV, or by writing to: Leo Campbell, New Electronic Businesses, 475 L'Enfant Plaza SW, Room 5670, Washington, DC 20260–2427. Requests sent by regular mail should include a self-addressed stamped return envelope.

§ 701.8 Fees.

(a) Senders submitting Messages shall be charged in accordance with fee schedules to be developed by the Postal Service. The fee shall be assessed against the Sender account number. Sender will be billed for the amount of the fee by the Authorized Computer Service Provider that issued the account number.

(b) A person submitting an account number in connection with a Message is representing to the Postal Service that he or she has authority to use the account number to pay for the Electronic Postmarking of the Message. Persons using account numbers without proper authority may be subject to fines and imprisonment.

§ 701.9 Specifications for recipients.

(a) When a Recipient receives a Postmarked Message, Recipient will need a USPS Mail Reader to read it. The USPS Mail Reader will include the public key file (and may include the Postal Service Certificate) for verifying the Postal Service Digital Signature on the Electronic Postmarked Message.

(b) The USPS Mail Reader is available from the Authorized Service Provider and will be licensed to Recipients on terms specified by the Authorized Service Provider. Use of the USPS Mail Reader constitutes acceptance of these terms.

§ 701.10 Electronic Postmark.

(a) Application of Electronic Postmark. Messages submitted for Electronic Postmarks will be processed substantially as follows:

(1) Upon receipt of the Message by the Mail Processor, the format of the information specified in § 701.6 and the Sender's account with the Authorized Computer Service Provider is verified. Messages that are not in proper format, and Messages received from Senders who do not designate valid account numbers, will be returned.

(2) Messages received in proper format from Senders with valid accounts will be readdressed to the intended Recipient(s) and passed to the Electronic Postmark Processor.

(3) The Electronic Postmark Processor will create an Electronic Postmark for the Message. It will then create a new Message, with the body being a graphical representation of the Electronic Postmark and with the original Message attached to the new Message using Mime base 64. The new Message, with attachment, is then sent back to the Mail Processor as the Postmarked Message.

(4) The Mail Processor will then forward the Electronic Postmarked Message to the Recipient(s) designated in the original Message via the same Authorized Value-Added Network from which it was received.

(b) Security Policy. The Electronic Postmark will be FIPS 140–1 complaint and will incorporate U.S. Postal Service Software Process Standards and Security Management Procedures. Implementation of the Electronic Postmark will also be governed by the Postal Services Electronic Commerce Services Security Policy. The Electronic Postmark will use Digital Signature Standard (DSS) as the signing algorithm.

§ 701.11 Digital signatures and certificates.

(a) All Postmarked Messages will be Digitally Signed by the Postal Service.

(b) The Digital Signature shall be based on the original Message, plus the Electronic Postmark, using the Digital Signature Standard (DSS).

(c) All Digital Signatures will be generated using a private key held by the Postal Service corresponding to a public key specified in the Certificate located in the United States Postal Service Prototype Certificate Authority in the Information Systems Service Center (ISSC) in San Mateo, CA.

§ 701.12 Message handling generally.

(a) Except as provided in § 701.10, the Postal Service will not undertake to verify the format or integrity of any Message received for Electronic Postmark Processing. Messages shall be Postmarked as received, regardless of condition.

(b) Messages will be processed for Electronic Postmarking and forwarding to the intended Recipient within a reasonable time after receipt by the Mail Processor. However, the Postal Service does not guarantee any specific response time.

(c) Messages with invalid account numbers will not be Electronic Postmarked or forwarded to the Recipient. They will be returned to Sender.

(d) Electronic Postmarked Messages will be forwarded to the Recipient identified by the Sender using the same Authorized Value-Added Network as that from which the Message was originally received by the Mail Processor. The Postal Service shall have no responsibility for delivery of the Message by the Authorized Value-Added Network.

§ 701.13 Terms and condition of service.

(a) The Electronic Postmark Services are offered subject to the terms of this part, which Senders are deemed to accept by submitting any Message to the Postmark Address at the Postal Service Mail Processor.

(b) The Postal Service shall have no liability to the Sender or any Recipient for any indirect, incidental, special, or consequential damages (including damages for loss of profits or revenue by the Sender, Recipient, or any third party), or for damages arising from lost or corrupted Messages or other data, delayed or incorrect forwarding of Messages, or any other failure or error on the part of the Postal Service, whether in an action in contract or tort, even if the Postal Service has been advised of the possibility of such damages.

(c) The Postal Service's entire liability for any damages claim (regardless of legal theory) arising from the provision of Electronic Postmarking Services shall not exceed the amount of fees paid by the applicable Sender for the Electronic Postmarking Services giving rise to the liability.

(d) Each Sender shall indemnify and hold the Postal Service and its Governors, officers, employees, subcontractors and agents (the ''Indemnified Parties'') harmless from and against any and all liabilities, losses, damages, costs, and expenses (including legal fees and expenses) associated with, or incurred as a result of, any claim or action brought against an Indemnified Party either for actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret, or other property right based on the processing, or communication of any Message submitted to the Postal Service by the Sender.

(e) A Sender shall not submit Messages or otherwise use Electronic Postmarking Services in any manner that violates any federal or state law or regulations.

§ 701.14 Security provisions.

(a) Policy. The Postal Service will preserve and protect the security of all Messages and Postmarked Messages in its custody from unauthorized interception, inspection or reading of contents, or tampering, delay, or other unauthorized acts. Any postal employee committing or allowing any of these

unauthorized acts is subject to administrative discipline and may be subject to criminal prosecution leading to fine, imprisonment, or both. An employee having a question about proper security procedures that is not clearly and specifically answered by postal regulations or by written direction of the Inspection Service or Law Department shall resolve the question by protecting the Messages in all respects and delivering them, or letting them be delivered, without interruption to their destination.

(b) Interception, Searching, or Reading of Messages Generally Prohibited.

(1) General.

In general, no employee may intercept, search, read, or divulge the contents of any Message submitted for Electronic Postmarking, even though such Message may be believed to contain criminal matter or evidence of the commission of a crime. The only exception to this general rule is for a person executing a search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure. Usually, a warrant issued by a Federal Court or service by a Federal Officer is issued under Rule 41, and is duly issued if signed and dated within the past 10 days. No employee shall permit the execution of a search warrant issued by a state court and served by a state officer.

(2) Disclosure of Information Collected from Messages Sent or Received by Customers. Except as provided in § 701.14(b)(1), no employee in the performance of official duties may disclose information collected from Messages processed by the Postal Service Electronic Postmark Processor, including any information about a Message processed by the Postal Service.

(3) Interference with Operation of Postal Computers.

Interference by any person with the operation of Postal Service data processing equipment, including the Postmark Processor, is strictly prohibited.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–19102 Filed 8–13–96; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5552–7]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of New Hampshire for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving the State's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by September 13, 1996.

ADDRESSES: Comments should be addressed to Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211.

Copies of the State's submittal and other supporting information relevant to this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it will extend for two years following the effective date of final interim approval, and cannot be renewed. During the interim approval period, the State of New Hampshire is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal permits program for the State of New Hampshire. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources specified in section 503(c) of the Act begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.[1]

Following final interim approval, if the State of New Hampshire fails to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the State of New Hampshire then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the State of New Hampshire has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of New Hampshire still has not submitted a corrective

[1] Note that states may require applications to be submitted earlier than required under section 503(c). See Env-A 609.05(d).

program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA disapproves the State of New Hampshire's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of New Hampshire has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of New Hampshire has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

Moreover, if EPA has not granted full approval to a State of New Hampshire program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of New Hampshire upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The Air Resource Division Director of the State of New Hampshire (Designee of the Governor) submitted an administratively complete title V Operating Permits Program (PROGRAM) on October 26, 1995. EPA deemed the PROGRAM administratively complete in a letter to the Commissioner dated November 22, 1995. The PROGRAM submittal includes a description of how the State intends to implement the PROGRAM and legal opinions from the Attorney General of New Hampshire stating that the laws of the State provide adequate authority to carry out the PROGRAM. The submittal additionally contains evidence of proper adoption of the PROGRAM regulations, permit application forms, a data management system and a fee adequacy demonstration.

2. Regulations and Program Implementation

The State of New Hampshire has submitted Env-A 600 entitled ''Statewide Permit System'' for implementing the State Part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of procedurally correct adoption is included in Section III of the submittal.

The New Hampshire operating permits regulations follow Part 70 very closely. The following requirements, set out in EPA's Part 70 operating permits program review are addressed in Section III of the State's submittal.

The New Hampshire PROGRAM, including the operating permits regulations, substantially meets the requirements of 40 CFR Part 70, including §§ 70.2 and 70.3 with respect to applicability; §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility; §§ 70.5 with respect to complete application forms and criteria which define insignificant activities; §§ 70.7 and 70.8 with respect to public participation, minor permit modifications, and review by affected states and EPA; and § 70.11 with respect to requirements for enforcement authority. Although the PROGRAM substantially meets Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the Technical Support Document, dated November 6, 1995 and entitled ''Technical Support Document—New Hampshire Operating Permits Program'' (''TSD''). The TSD also contains a detailed discussion of elements of Part 70 that appear in New Hampshire's title V program regulations but which are in need of some clarification. That clarification is provided by EPA in the TSD and by the New Hampshire Attorney General's Office by a legal Opinion supplementing the State's original submittal.

Prompt Reporting of Deviations From Permit Requirements

Part 70 of the operating permits regulation requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. The State of New Hampshire has not defined ''prompt'' in its program with respect to reporting of deviations. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under § 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

Definition of ''Title I Modification''

New Hampshire's definition of ''title I modification'' does not include changes reviewed under a minor source preconstruction review program (''minor NSR changes''). In an August 29, 1994 rulemaking proposal, EPA explained its view that the better reading of ''title I modifications'' includes minor NSR. However, the Agency solicited public comment on whether the phrase should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. (59 FR 44572, 44573). This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act.

The EPA has not yet taken final action on the August 29, 1994 proposal. However, in response to public comment on that proposal, the Agency has decided that the definition of ''title I modifications'' is best interpreted as not including changes reviewed under minor NSR programs. EPA included this interpretation in a supplemental rulemaking proposal published on August 31, 1995. 60 FR 45530, 545–546. Thus, New Hampshire's definition of ''title I modification'' is fully consistent with EPA's current interpretation of Part 70.

In the August 29, 1994 proposal (59 FR 44572) the Agency stated that if, after considering the public comments, it determined that the phrase ''title I modifications'' should be interpreted as including minor NSR changes, the Agency would revise the interim approval criteria as needed to allow states with a narrower definition to be eligible for interim approval. If EPA should conclude, during the final rulemaking on the August 29, 1994 (59 FR 44572) and August 31, 1995 (60 FR 45530, 545–546) proposals, that Title I modifications should be read to include minor NSR, it will identify the narrow definition of Title I modification as an interim approval condition on New Hampshire's program at the appropriate time.

Variances

New Hampshire has the authority to issue a variance from certain regulatory

requirements imposed by State law. *See* Env-A 207 and RSA 125–C:16. The EPA regards New Hampshire's variance provisions as wholly external to the program submitted for approval under Part 70 and consequently is proposing to take no action on these provisions of State law. The EPA has no authority to approve provisions of State law that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. A Part 70 permit may be issued or revised (consistent with Part 70 procedures), to incorporate those terms of a variance that are consistent with applicable requirements. A Part 70 permit may also incorporate, via Part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

Audit Privilege and Penalty Waiver Legislation

The Clean Air Act sets forth the minimum elements required for approval of a State operating permits program, including the requirement that the permitting authority has adequate authority to assure that sources comply with all applicable CAA requirements as well as authority to enforce permits through recovery of minimum civil penalties and appropriate criminal penalties. Section 502(b)(5) (A) and (E) of the CAA. EPA's implementing regulations, which further specify the required elements of State operating permits programs (40 CFR Part 70), explicitly require States to have certain enforcement authorities, including authority to seek injunctive relief to enjoin a violation, to bring suit to restrain violations imposing an imminent and substantial endangerment to public health or welfare, and to recover appropriate criminal and civil penalties. 40 CFR 70.11. In addition, section 113(e) of the CAA sets forth penalty factors for EPA or a court to consider for assessing penalties for civil and criminal violations of title V permits. EPA is concerned about the potential impact of some State privilege and immunity laws on the ability of such States to enforce federal requirements, including those under title V of the CAA. Based on review and consideration of the statutory and regulatory provisions discussed above, EPA issued guidance on April 5, 1996, entitled ''Effect of Audit Immunity/ Privilege Laws on States' Ability to Enforce Title V Requirements'' to address these concerns. This guidance outlines certain elements of State audit immunity and privilege laws which, in EPA's view, may so hamper the State's ability to enforce as to preclude approval of the State's title V operating permits program.

New Hampshire has adopted legislation that would provide, subject to certain conditions, for an environmental audit ''privilege'' for voluntary compliance evaluations performed by a regulated entity. New Hampshire's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the State and takes prompt and appropriate measures to remedy the violations.

New Hampshire's audit privilege legislation excludes from the scope of the privilege all ''[d]ocuments, communications, data, reports, or other information required to be collected, developed, maintained, reported, or otherwise made available to a regulatory agency pursuant to an environment law.'' Such information is ''non-privileged'' under the terms of the legislation. Thus, EPA is not listing any conditions on New Hampshire's title V program approval for this issue because the legislation will not preclude the State from enforcing its title V permit program requirements consistent with the requirements of the CAA. New Hampshire's Attorney General has submitted a legal opinion which supports EPA's understanding that the State title V program requirements for compliance monitoring, reporting of violations, recordkeeping, and compliance certification, together render the privilege inapplicable to compliance evaluations, at a title V source, of the State's title V requirements.

New Hampshire's Attorney General Opinion also addresses the penalty waiver provisions of the audit legislation. Section 147–E:9, II of the legislation excludes certain violations from the scope of the penalty waiver provision. For example, criminal acts committed knowingly, purposefully, or recklessly are not covered by the penalty waiver provision when disclosed to the State. Another category excluded from the scope of the penalty waiver is violations that result in serious harm to human health or the environment. Although the list of excluded violations does not explicitly contain violations that result in a significant economic benefit, violations that are required to be disclosed by law, or violations that result in a serious risk of harm to human health or the environment, New Hampshire's Attorney General Opinion explains that in the context of New Hampshire's title V operating permit program such violations could not qualify for the penalty waiver. In essence, the Attorney General Opinion states that violations of the terms and conditions of State-issued title V permits are excluded from the penalty waiver provision because any such violations would be required to be disclosed by the title V permit itself pursuant to at least one, and possibly all, of the following requirements in New Hampshire's program: (1) the obligation to report promptly any deviations from the terms and conditions of the permit; (2) the obligation to submit monitoring reports no less frequently than semi-annually; and (3) the obligation to submit annual compliance certifications. Hence, these requirements would preclude a title V source from asserting that it ''elected'' (the term used in New Hampshire's legislation) to disclose any such violations to the State, i.e. such disclosure could not be voluntary under State law, a precondition for the applicability of the penalty waiver provisions.

With regard to violations of the requirement to apply for a title V permit, the Attorney General opines that a title V source could not ''elect,'' or volunteer, to disclose the application violation, and so the penalty waiver provisions would not apply. The reasoning in the Attorney General Opinion is as follows. A source is under a continuing obligation, even when failing to apply for a permit on time, to submit to the State information sufficient to enable the State to issue a title V permit. Such information would necessarily contain, or at least include a reference to, information relating to all construction permits and non-title V State operating permits already issued to the source. This information would indicate when the source became a ''major source.'' Moreover, the State already possesses extensive computerized emissions data on each source in the State. These sources of emissions information would enable the State to deduce that the source had

failed to apply for a title V permit in a timely manner. Thus, there is no meaningful sense in which a source could ''elect'' to disclose, or voluntarily disclose, the application violation because the source was required by virtue of the permit application requirement of the State's regulations to submit the source's emissions information (or at least reference existing permits that contain such information) from which the State could deduce on its own that the violation occurred.

The Attorney General Opinion adds that as a practical matter New Hampshire will be aware of a source's failure to apply for a title V permit before the source submits a belated permit application. The Attorney General Opinion asserts that the State has, based on its existing emissions inventory, already identified all sources in the State subject to title V and has notified them of their obligation to apply for a title V permit, and will therefore independently know of any permit application violation that occurs. The Attorney General argues that since New Hampshire's legislation excludes from the scope of the penalty waiver provisions those violations independently discovered by the State, the waiver provisions would not apply to permit application violations because the State would already know of the violation at the time the source belatedly applied.

The Attorney General Opinion also addresses certain hypothetical factual situations and explains why the penalty waiver and privilege provisions of the State legislation would not apply. Those situations involve instances in which a title V source evaluates compliance with a title V permit term or condition in a method different from the compliance method specified in the permit, or evaluates compliance at more frequent time intervals than required by the title V permit. In essence, since any violations discovered in either of the two situations described above would be required to be reported under the terms and conditions of the permit, disclosure of such violations could not be voluntary and hence could not qualify for the penalty waiver or the privilege.

New Hampshire's Attorney General Opinion concludes that the privilege and penalty waiver provisions of New Hampshire's audit legislation are not available to title V permit holders for violations of title V requirements. Based on the Attorney General's discussion of the issues as described above, EPA is not listing conditions on New Hampshire's title V program approval with regard to these issues. However, if New Hampshire's implementation of its title V program is inconsistent with the Attorney General's Opinion or the State's audit legislation is held by the New Hampshire State courts to be applicable to title V violations, EPA reserves its rights to address what would in that event be the State's inability to enforce its title V program consistent with the requirements of the CAA.

The complete program submittal, the TSD, and New Hampshire's Attorney General Opinion are available in the docket for review. The TSD includes a detailed analysis, including a program checklist, of how the State's program and regulations compare with EPA's requirements and regulations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index. The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the ''presumptive minimum.''

New Hampshire has opted to make a presumptive minimum fee demonstration. In the fee regulation, the State proposes an emission based fee for calculating the operating permit program fees. This fee is equivalent to at least the Part 70 presumptive minimum fee of $25 per ton of regulated air pollutants, adjusted per the consumer price index (CPI). Using New Hampshire's emission based fee approach, the State is charging a dollar per ton fee of $43.30 starting in 1995 and adjusting it annually by the CPI and an inventory stabilization factor (ISF). The ISF is the quotient of the total statewide stationary source actual emissions as determined from the revised 1993 inventory divided by the total statewide stationary source actual emissions from the previous calendar year. If the ISF computes to a number less than 1, then 1 shall be used as the ISF. New Hampshire's average rate is above the presumptive minimum adjusted by the CPI.

Therefore, New Hampshire has demonstrated that the state is collecting sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see Attachment E of New Hampshire's title V program submittal.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

New Hampshire has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements for hazardous air pollutants through the title V permit. This legal authority is contained in New Hampshire's enabling legislation and in regulatory provisions defining ''applicable requirements'' and requiring that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow New Hampshire to issue permits that assure compliance with all section 112 requirements.

Therefore, the State of New Hampshire's legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements, and to carry out all section 112 activities at Part 70 sources. For further rationale on this interpretation, please refer to the Technical Support Document referenced above and the April 13, 1993 guidance memorandum titled ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Implementation of 112(g) Upon Program Approval

On February 14, 1995 EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g) New Hampshire must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. EPA believes that New Hampshire can utilize its preconstruction permitting program to serve as a procedural vehicle for implementing section 112(g) rule and making these requirements Federally

enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations. For this reason, EPA is approving New Hampshire's preconstruction permitting program found in Env-A 600, Statewide Permit System, under the authority of title V and Part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA is limiting the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for Straight Delegation of Section 111 and 112 Standards

Requirements for operating permit program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of hazardous air pollutant requirements under section 112 and standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. EPA is also granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j) and 112(r) to the extent they apply to sources subject to New Hampshire's title V program regulations. EPA is reconfirming the 40 CFR parts 60 and 61 standards currently delegated to New Hampshire as indicated in Table I.[2] In addition, EPA is proposing to delegate all future 40 CFR part 63 standards to the extent they apply to sources subject to New Hampshire's title V program regulations.[3] EPA is delegating the 40 CFR part 63 standards as indicated in Table II to the extent they apply to sources subject to New Hampshire's title V program regulations.

New Hampshire has informed EPA that it intends to accept future delegation of section 112 standards by checking the appropriate boxes on a standardized checklist. The checklist will list applicable regulations and will be sent by the EPA Regional Office to New Hampshire. New Hampshire will accept delegation by checking the appropriate box and returning the checklist to EPA Region I. The details of this delegation mechanism are set forth in the May 30, 1996 Memorandum of Agreement between New Hampshire and EPA. This program applies to both existing and future standards but is limited to sources covered by the Part 70 program. The original delegation agreement between EPA and New Hampshire was set forth in a letter to Dennis R. Lunderville dated September 30, 1982.

d. Commitment to Implement Title IV of the Act

New Hampshire has committed to take action, following promulgation by EPA of regulations implementing section 407 and 410 of the Act, or revisions to either Parts 72, 74, or 76 or the regulations implementing section 407 or 410, to either incorporate by reference or submit, for EPA approval, New Hampshire Department of Environmental Protection (DEP) regulations implementing these provisions.

B. Proposed Action

The EPA is proposing to grant interim approval to the operating permits program submitted by New Hampshire on October 26, 1995. If promulgated, the State must make the following change to receive full approval:

1. New Hampshire does not allow for ''section 502(b)(10)'' changes at a title V source. In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10) changes are no longer required as a mechanism for operational flexibility, then New Hampshire will not be required to address 502(b)(10) changes in its rule.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The scope of the State of New Hampshire's Part 70 program that EPA is proposing in this notice would apply to all Part 70 sources (as defined in the approved program) within the State of New Hampshire, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–55818 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. EPA is granting approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

III. Administrative Requirements

A. Opportunity for Public Comments

The EPA is requesting comments on all aspects of the proposed interim approval. Copies of the State's submittal and other information relied upon for

[2] Please note that federal rulemaking is not required for delegation of section 111 standards.

[3] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for Part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under Part 70 for another reason, thus requiring a Part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

the interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by September 13, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

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

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approving preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1996.

John P. DeVillars,

Regional Administrator, Region I.

TABLE I.— RECONFIRMATION OF PART 60 AND 61 DELEGATIONS

Part 60 Subpart Categories	
D	Fossil-Fuel Fired Steam Generators.
Da	Electric Utility Steam Generators.
Db	Industrial-Commercial-Institutional Steam Generating Unit.
Dc	Small Industrial-Commercial-Institutional Steam Generating Unit.
E	Incinerators.
Ea	Municipal Waste Combustors.
I	Asphalt Concrete Plants.
J	Petroleum Refineries.
K	Petroleum Liquid Storage Vessels.
Ka	Petroleum Liquid Storage Vessels.
Kb	Petroleum Liquid Storage Vessels.
L	Secondary Lead Smelters.
M	Secondary Brass and Bronze Production Plants.
N	Basic Oxygen Process Furnaces Primary Emissions.
O	Sewage Treatment Plants.
AA	Steel Plants-Electric Arc Furnaces.
BB	Kraft Pulp Mills.
DD	Grain Elevators.
EE	Surface Coating of Metal Furniture.
GG	Stationary Gas Turbines.
KK	Lead-Acid Battery Manufacturing.
LL	Metallic Mineral Processing Plants.
QQ	Graphic Arts-Rotogravure Printing.
RR	Tape and Label Surface Coatings.
TT	Metal Coil Surface Coating.
VV	Equipment Leaks of Voc in Socmi.
WW	Beverage Can Surface Coating.
XX	Bulk Gasoline Terminals.
BBB	Rubber Tire Manufacturing.
FFF	Flexible Vinyl and Urethan Coating and Printing.
GGG	Equipment Leaks of Voc in Petroleum Refineries.
HHH	Synthetic Fiber Production.
JJJ	Petroleum Dry Cleaners.
OOO	Nonmetallic Mineral Plants.
QQQ	Voc From Petroleum Refinery Waste Water Systems.
SSS	Magnetic Tape Coating.
TTT	Surface Coating of Plastic Parts For Business Machines.
UUU	Calciners and Dryers in the Mineral Industry.
VVV	Polymetric Coating of Supporting Substrates.

TABLE I.— RECONFIRMATION OF PART 60 AND 61 DELEGATIONS—Continued

Part 61 Subpart Categories	
C	Beryllium.
E	Mercury.
J	Equipment Leaks of Benzene.
M	Asbestos.
V	Equipment Leaks (Fugitive Emission Sources).

TABLE II.—DELEGATION OF PART 63 STANDARDS AS THEY APPLY TO NEW HAMPSHIRE'S TITLE V OPERATING PERMITS PROGRAM

Part 63 Subpart Categories	
A	General Provisions.
B	Equivalent Emission Limitation by Permit.
D	Compliance Extensions for Early Reductions.
F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.
G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
N	National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Emission Standards for Sterilization Facilities.
Q	National Emission Standards for Hazardous Air Pollutants for Industrial Cooling Towers.
R	National Emission Standards for Organic Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I).
T	National Emission Standards for Halogenated Solvent Cleaning.
W	National Emission Standards for Organic Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
X	National Emission Standards for Organic Hazardous Air Pollutants From Secondary Lead Smelting.
Y	National Emission Standards for Organic Hazardous Air Pollutants for Marine Tank Vessel Loading Operations.
CC	National Emission Standards for Organic Hazardous Air Pollutants: Petroleum Refineries.
GG	National Emission Standards for Organic Hazardous Air Pollutants for source categories: Aerospace Manufacturing and Rework.
JJ	National Emission Standards for Wood Furniture Manufacturing Operations.
KK	National Emission Standards for Printing and Publishing.

[FR Doc. 96–20591 Filed 8–13–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–26; RM–8749]

Radio Broadcasting Services; Booneville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of James P. Gray, dismisses the petition for rule making proposing the allotment of Channel 287A at Booneville, Kentucky, as the community's first local aural transmission service *See* 61 FR 9411, March 8, 1996. It is the Commission's policy to refrain from making allotments to a community absent an expression of interest. Therefore, since there has been no such interest expressed here, we dismiss the petitioner's proposal. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–26, adopted July 3, 1996, and released July 12, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20641 Filed 8–13–96; 8:45 am]
BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 94–70; RM–8474; 8706]

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

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition for rule making filed by Ceder Carolina Limited Partnership proposing the substitution of Channel 288C2 for Channel 287C3 at Moncks Corner, South Carolina, the reallotment of Channel 288C2 from Moncks Corner to Kiawah Island, and the modification of Station WNST(FM)'s license accordingly (RM–8474). *See* 59 FR 35082, July 8, 1994. We also deny the counterproposal filed

by Sampit Broadcasting proposing the allotment of Channel 289A at Sampit, South Carolina (RM–8706). The Commission finds that the Kiawah and Sampit proposals are technically and/or legally deficient, and are therefore not grantable. With action this action, proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–70, adopted July 17, 1996, and released July 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20709 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–161; RM–8842]

Radio Broadcasting Services; Carlisle, Irvine and Morehead, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by James P. Gray, Kentucky River Broadcasting Company, and WMOR, Inc., proposing the substitution of Channel 221C3 for Channel 264A at Carlisle, Kentucky; the substitution of Channel 264C3 for Channel 291A at Irvine, Kentucky; the substitution of Channel 291C3 for Channel 221A at Morehead, Kentucky, and the modification of the stations' respective licenses accordingly. Channel 221C3 can be allotted to Carlisle in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.1 miles) east. The coordinates for Channel 221C3 at Carlisle are North Latitude 38–17–42 and West Longitude 83–52–32. Channel 264C3 can be allotted to Irvine with a site restriction of 7.7 kilometers (4.8 miles) west to avoid short-spacings to the licensed sites of Station WWYC(FM), Channel 261C2, Winchester, Kentucky, and Station WSGS(FM) Channel 266C, Hazard, Kentucky. The coordinates for Channel 264C3 at Irvine are North Latitude 37–43–27 and West Longitude 84–02–38. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before September 23, 1996, and reply comments on or before October 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Esq., Miller & Miller, P.C, P.O. Box 33003, Washington, DC 20033 (Counsel for Petitioners).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–161, adopted July 26, 1996, and released August 2, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 291C3 can be allotted to Morehead with a site restriction of 3.6 kilometers (2.3 miles) west to avoid a short-spacing to the licensed site of Station WMST-FM, Channel 288A, Mount Sterling, Kentucky. The coordinates for Channel 291C3 at Morehead are North Latitude 38–11–17 and West Longitude 83–28–37. In accordance with Section 1.420(g)(3) of the Commission's Rules, these proposals constitute ''incompatible channels swaps.'' Therefore, any persons expressing interest in the respective channels should demonstrate why these proposals are not ''incompatible channel swaps'' such that their expressions of interest are foreclosed.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20642 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 96–141; RM–8835]

Radio Broadcasting Services; Lupton, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bible Baptist Church requesting the allotment of Channel 272A to Lupton, Michigan, and reservation of the channel for noncommercial educational use. The coordinates for Channel *272A at Lupton are 44–30–25 and 84–08–12. There is a site restriction 12.2 kilometers (7.6 miles) northwest of the community. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before September 9, 1996, and reply comments on or before September 24, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Reddy, Begley & McCormick, 1001 - 22nd Street, NW., Suite 350, Washington, DC 20037–1803.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–141, adopted July 12, 1996, and released July 19, 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.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos

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

[FR Doc. 96–20643 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–49; RM–8558]

Radio Broadcasting Services; Llano and Marble Falls, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this *Further Notice* to solicit comments on the proposal to allot Channel 242A at Llano, Texas, as requested by Maxagrid Broadcasting Corporation, licensee of Station KLKM(FM), Channel 284C3, Llano, Texas. *See* 60 Fr 22021, May 4, 1995. Channel 242A can be allotted to Llano in compliance with the Commission' minimum separation requirements with a site restriction of 9.1 kilometers (5.7 miles) north to avoid a short-spacing conflict with the licensed site of Station KSJL(FM), Channel 241C1, San Antonio, Texas. The coordinates for Channel 242A are 30–49–57 and 98–40–44. Since Llano is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

DATES: Comments must be filed on or before September 23, 1996, and reply comments on or before October 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J.J. McVeigh, Bernstein and McVeigh, 1818 N Street, Northwest, Suite 700, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Further Notice of Proposed Rule Making,* MM Docket No. 95–49, adopted July 26, 1996, and released August 2, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20644 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No.96–163, RM–8841]

Radio Broadcasting Services; Clifton, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by D. Mitchell Self Broadcasting, Inc. proposing the allotment of Channel 293A at Clifton, Tennessee, as the community's first local FM service. Channel 293A can be allotted to Clifton in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) northwest in order to avoid a short-spacing conflict with the licensed site of Station WBTG(FM), Channel 292C3, Sheffield, Alabama. The coordinates for Channel 293A at Clifton are 35–28–01 and 88–03–11.

DATES: Comments must be filed on or before September 23, 1996, and reply comments on or before October 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R.Jazzo, Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Rosslyn, Virginia 22209–3801 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 96–163, adopted July 26, 1996, and released August 2, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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 contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96–20645 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 61, No. 158
Wednesday, August 14, 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.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee On Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held September 6, 1996, 9:30 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4830, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1995, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 8, 1996.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 96–20683 Filed 8–13–96; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–475–818]

Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta From Italy

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

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: John Brinkmann at (202) 482–5288, Jennifer Katt at (202) 482–0498, or Greg Thompson at (202) 482–3003, Office of AD/CVD Duty Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA).

Scope of Order

The scope of this order consists of certain non-egg dry pasta in packages of five pounds (or 2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Associazione Marchigiana Agricultura Biologica (AMAB) or by Bioagricoop scrl.

On July 9, 1996, after the date of our final antidumping duty determination, Euro-USA Trading Co., Inc., of Pawcatuck, CT, submitted materials to the Department supporting its request for an exclusion for pasta certified to be ''organic pasta.'' Among the documents submitted are a decree from the Italian Ministry of Agriculture and Forestry authorizing Bioagricoop scrl to certify foodstuffs as organic for the implementation of EEC Regulation 2029/91. Also submitted is a letter (with an accompanying translation into English) from the Director of Controls of Processing and Marketing Firms at Bioagricoop stating that the organization will take responsibility for its organic pasta certificates and will supply necessary documentation to U.S. authorities. On this basis, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricoop scrl are excluded from the scope of this order.

The merchandise under order is currently classifiable under items 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Second Amendment to the Final Determination and Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on July 17, 1996, the Department amended its final determination and released an order that certain pasta (pasta) from Italy is being, or is likely to be, sold in the United States at less than fair value (61 FR 38547 (July 24, 1996)). On July 26, 1996, we received a submission from one of the respondents to the antidumping investigation, Liguori Pastificio dal 1820, SpA, (Liguori), alleging an error in the Department's calculation of the company's antidumping duty deposit rate. Specifically, Liguori argued that the Department failed to take into account the fact that the company is

depositing estimated countervailing duties at the ''All Others'' rate listed in the Countervailing Duty (CVD) Order. Liguori contends that 0.83 percent of this CVD deposit rate reflects export subsidies. We have reviewed Liguori's argument and agree, pursuant to Article VI (5) of the General Agreement on Tariffs and Trade (1947) which prohibits assessing dumping duties on the portion of the CVD margin attributable to an export subsidy, that the Department did not deduct the export subsidy portion of the ''All Others'' rate in calculating the antidumping deposit rate for Ligouri. In addition, the Department noted this same correction will apply to another respondent, Pastificio Fratelli Pagani S.p.A. Correction of these errors results in the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Cash deposit rate
Arrighi/Italpasta	19.09
De Cecco	46.67
De Matteis	0.00
Delverde/Tamma	1.68
La Molisana	14.73
Liguori	11.58
Pagani	17.47
All Others	11.26

This notice constitutes the second amendment to the final determination and antidumping duty order with respect to pasta from Italy, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 USC 1673e (a)) and 19 CFR 353.21.

Dated: August 8, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–20749 Filed 8–13–96; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Notice; Solicitation of Business Development Center Applications for Denver, Dallas/Ft. Worth/Arlington and Anaheim

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Centers (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

In accordance with the Interim Final Policy published in the Federal Register on May 31, 1996, the cost-share requirement for the MBDCs listed in this notice has been increased to 40%. The Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the ''cost-share requirement'').

Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center. For administrative purposes, one organization must be designated as the recipient organization.

Pre-Application Conference: A pre-application conference will be held. The date, time, and location is listed below for each Center.

(Proper Identification Is Required for Entrance Into any Federal Building).

ADDRESSES: Completed application packages MUST be submitted to the U.S. DEPARTMENT OF COMMERCE, MINORITY BUSINESS DEVELOPMENT AGENCY, MBDA EXECUTIVE SECRETARIAT, 14TH AND CONSTITUTION AVENUE, N.W., ROOM 5073, WASHINGTON, D.C. 20230, TELEPHONE NUMBER (202) 482–3763.

SUPPLEMENTARY INFORMATION: The following are MBDCs for which applications are solicited:

1. MBDC APPLICATION: Denver

METROPOLITAN AREA SERVICED: Denver, Colorado.

AWARD NUMBER: 08–10–97001–01.

CLOSING DATE: SEPTEMBER 20, 1996.

PRE-APPLICATION CONFERENCE: Wednesday, August 28, 1996, 9:00 a.m., Pena Business Plaza, 930 West 7th Avenue, Conference Room, Denver, Colorado 80202.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Bobby Jefferson, Acting Regional Director, at (214) 767–8001.

COST OF PERFORMANCE INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from December 1, 1996 to December 31, 1997, is estimated at $314,778. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share of 40%, $125,911 in non-federal (cost-sharing) contributions for a total project cost of $314,778.

2. MBDC APPLICATION: Dallas/Ft. Worth/Arlington

METROPOLITAN AREA SERVICED: Dallas/Ft. Worth/Arlington, Texas.

AWARD NUMBER: 06–10–97003–01.

CLOSING DATE: SEPTEMBER 20, 1996.

PRE-APPLICATION CONFERENCE: Thursday, August 22, 1996, 9:00 a.m., Earl Cable Federal Building, U.S. Department of Commerce, Minority Business Development Agency, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Bobby Jefferson, Acting Regional Director, at (214) 767–8001.

COST OF PERFORMANCE INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from December 1, 1996 to December 31, 1997, is estimated at $628,702. The total Federal amount is $377,221 and is composed of $368,020 plus the Audit Fee amount of $9,201. The application must include a minimum cost share of 40%, $251,481 in non-federal (cost-sharing) contributions for a total project cost of $628,702.

3. MBDC APPLICATION: Anaheim

METROPOLITAN AREA SERVICED: Anaheim, California.

AWARD NUMBER: 09–10–97006–01.

CLOSING DATE: SEPTEMBER 27, 1996.

PRE-APPLICATION CONFERENCE: A pre-application will be held. For the exact date, time, and location, contact the San Francisco Regional Office.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Melda Cabrera, Regional Director, at (415) 744–3001.

COST OF PERFORMANCE INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from January 1, 1997 to January 31, 1998, is estimated at $550,938. The Total Federal amount is $330,563 and is composed of $322,500 plus the Audit Fee amount of $8,063. The application must include a minimum cost share of 40%, $220,375 in non-federal (cost-sharing) contributions for a total project cost of $550,938.

Standard Paragraphs

The following information and requirements are applicable to the listed MBDCs: Denver, Dallas/Ft. Worth/ Arlington and Anaheim.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). In accordance with Interim Final Policy published in the Federal Register on May 31, 1996, the scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if finding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In the event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Cost—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/ cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

11.800 Minority Business Development Center
(Catalog of Federal Domestic Assistance)

Dated: August 9, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–20740 Filed 8–13–96; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Proposal to Issue, Reissue, and Modify Nationwide Permits

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of time extension for receipt of comments.

SUMMARY: On Monday, June 17, 1996, the Corps of Engineers published a proposal to reissue the existing nationwide permits (NWPs) and conditions, with some modifications, issue four new NWPs, and proposed options for the threshold limits for NWP 26 (61 FR 30780). The public is invited to provide comments on these proposals.

DATES: The closing date for receipt of comments regarding this proposed rule is hereby being extended from August 16, 1996, as originally published, to September 3, 1996.

ADDRESSES: Comments should be submitted in writing to : HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314–1000. Comments will be available for examination at the HQUSACE, Room 6225, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314–1000 after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Zimmerman or Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 761–0199.

Dated: August 8, 1996.

Approved:

Robert W. Burkhardt, Col,

Asst Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 96–20748 Filed 8–13–96; 8:45 am]

BILLING CODE 3710–92–M

Proposal to Issue, Reissue, and Modify Nationwide Permits

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of regional public hearings.

SUMMARY: On Monday, June 17, 1996, Corps published a proposal to reissue the existing nationwide permits (NWPs) and conditions, with some modifications, issue four new NWPs, and proposed options for the threshold limits for NWP 26 (61 FR 30780). The Corps is conducting six regional public hearings to address regional issues on these NWP proposals.

DATES: See **SUPPLEMENTARY INFORMATION** below for dates, times, locations, and points of contact for these hearings.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Zimmerman or Mr. Sam Collinson, Regulatory Branch, (Office of the Chief of Engineers) at (202) 761–0199.

SUPPLEMENTARY INFORMATION: The regional hearings will be held at the following locations during the times and dates specified below:

Atlanta, GA

Thurs. Aug. 29, 1996; 10:00 a.m.

Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW
POC: Pat Bevel (404) 331–6744

Chicago, IL

Tues. Aug. 27, 1996; 10 a.m.–12 p.m., 1 p.m.–4 p.m.

Lobby Conference Center, River Center Building, 111 North Canal Street
POC: Mitch Isoe (312) 353–6428

Dallas-Fort Worth, TX

Wed. Aug. 21, 1996; 1:30 p.m.–4 p.m.

Hyatt Regency Hotel, West Tower, Dallas-Fort Worth International Airport
POC: Vicki Dixon (214) 767–2436

New York City, NY

Wed. Aug. 28, 1996; 10 a.m.–12 p.m., 1 p.m.–5 p.m.

U.S. Customs House Bankruptcy Court, 1 Bowling Green, Basement Auditorium, Broadway, Lower Manhattan
POC: Mark Roth (212) 264–0184

San Francisco, CA

Thur. Sept. 5, 1996; 3 p.m.–9 p.m.

Holiday Inn, Financial District, 750 Kearny Street
POC: Calvin Fong (415) 977–8460

Seattle, WA

Wed. Aug. 21, 1996; 1:30 p.m.–4:30 p.m.

Joint Use Auditorium North, South Federal Center, 4735 East Marginal Way South

POC: Bob Martin (206) 764–34

Dated: August 8, 1996.

Approved:

Robert W. Burkhardt, Col,

Asst Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

[FR Doc. 96–20747 Filed 8–13–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; 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 October 15, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 8, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: EXTENSION.

Title: The State Student Incentive Grant Program.

Frequency: Annually.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 570.

Abstract: The SSIG Program uses matching Federal and State funds to provide a nationwide system of grants to assist postsecondary education students with substantial financial need. State agencies use this performance report to account for yearly program performance. The Department uses the information collected to assess the accomplishment of the program goals and objectives and to aid in program management and compliance assurance.

[FR Doc. 96–20648 Filed 8–13–96; 8:45 am]

BILLING CODE 4000–01–P

President's Advisory Commission on Educational Excellence for Hispanic Americans; Notice of Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES: 1. Wednesday, September 4, 1996, 2:00 p.m. (est) to 5:00 p.m. (est); 2. Thursday, September 5, 1996, 9:00 a.m. (est) to 5:00 p.m. (est).

ADDRESSES: Call Vanessa Rini at (202) 401–2147.

FOR FURTHER INFORMATION CONTACT: Vanessa Rini, Special Assistant, White House Initiative on Educational Excellence for Hispanic Americans. Her mailing address is U.S. Department of Education, 600 Independence Ave SW, RM 2115, Washington, DC 20202–3601 and her e-mail address is vanessa__rini@ed.gov.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans was established under Executive Order 12900, which was effective on February 22, 1994. The Commission was established to provide the President and the Secretary of Education with advice on (a) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (b) the development, monitoring, and education for Hispanic Americans; (c) ways to increase State, private sector, and community involvement in improving education; and (d) ways to expand and complement Federal education initiatives.

This meeting is open to the public. The Commission will be formulating a plan to ensure the recommendations in its annual report to the President are carried out and planning its course of action for the upcoming year.

Records are kept of all Council proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m. (est).

G. Mario Moreno,

Assistant Secretary.

[FR Doc. 96–20734 Filed 8–13–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–14–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 8, 1996.

Take notice that on August 5, 1996, Eastern Shore Natural Gas Company

(ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, with proposed effective dates of April 1, 1996 and August 1, 1996, respectively.

ESNG states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under Transco's Rate Schedule LSS the costs of which are included in the rates and charges payable under ESNG's Rate Schedule LSS effective April 1, 1996 and August 1, 1996, respectively. This tracking filing is being filed pursuant to Section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

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 Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–20654 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–11–001]

Granite State Gas Transmission; Notice of Filing

August 8, 1996.

Take notice that on August 1, 1996, Granite State Gas Transmission, Inc. (Granite State) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566–A,[2] and a report in response to the Commission's July 2, 1996 order.[3]

Granite State states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20650 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (1988) (Regulations Preambles 1986–1990); Order No. 497–A *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 30,868 (1989) (Regulations Preambles 1986–1990); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (1990) (Regulations Preambles 1986–1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas v. FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc. v. FERC,* D.C. Cir. Docket No. 94–1745 (December 14, 1994).

[3] 76 FERC ¶ 61,014 (1996).

[Docket No. GT96–94–000]

K N Interstate Gas Transmission Company; Notice of Refund Report Filing

August 8, 1996.

Take notice that on August 6, 1996, K N Interstate Gas Transmission Co. (KNI) filed a refund report pursuant to the Commission's October 13, 1995 order issued in Docket No. RP96–271–000.

KNI states that the refund report shows the refund received by KNI from Gas Research Institute over-collections in the amount of $206,062 and the *pro rata* allocation of that refund amount to KNI's eligible firm customers.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 15, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 96–20649 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–12–001]

Texas Eastern Transmission Corporation; Notice of Filing

August 8, 1996.

Take notice that on July 25, 1996, Texas Eastern Transmission Corporation (Texas Eastern) submitted revised standards of conduct under Order Nos.

497 *et seq.*[1] and Order No. 566–A.[2] Texas Eastern states that it is revising its standards of conduct to reflect that it has three marketing affiliates, Altra Streamline L.L.C., PanEnergy Gas Services, Inc. and Energy Plus Marketing Company. Texas Eastern states that it does not share any office space with its marketing affiliates.

Texas Eastern states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before August 23, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20651 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (1988) (Regulations Preambles 1986–1990); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 30, 868 (1989) (Regulations Preambles 1986–1990); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (1990) (Regulations Preambles 1986–1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc.* v. *FERC,* D.C. Cir. Docket No. 94–1745 (December 14, 1994).

[Docket No. TM96–6–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1996.

Take notice that on July 31, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets contained in Appendix A to the filing.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to the Transportation Cost Adjustment provisions included as a part of the Stipulation and Agreement in Docket No. RP94–423, and contained in Section 39 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, as filed on February 23, 1996. The net rate change proposed by this filing is a reduction of $(0.0147) in the FT and NNS daily demand rates, $(0.0029) in the FT and NNS commodity rates, $(0.0323) in the SGT rates for Zones 1–4, and $(0.0255) for SGT–SL. Interruptible transportation and overrun rates are also generally reduced by $(0.0176).

Texas Gas respectfully requests that the revised tariff sheets reflecting a net reduction in its rates become effective September 1, 1996.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

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 Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding 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. 96–20306 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–305–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 8, 1996.

Take notice that on August 6, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

Second Revised Volume No. 1
Second Revised Sheet No. 120
Third Revised Sheet No. 122

Williston Basin states that it is resubmitting the above tariff sheets because they were inadvertently omitted from the list of approved tariff sheets in the August 1, 1996, Order in Docket No. RP96–305–000. Williston Basin requests that the Commission grant waiver of the 30-day notice requirement of Section 154.207 so as to allow the above tariff sheets to become effective on August 2, 1996, the effective date of the other approved tariff sheets.

Williston Basin states that the tariff sheets are revised to delete subsections which pertain to Rate Schedule S–3 as the Commission accepted Williston Basin's filing to terminate the last Rate Schedule S–3 Service Agreement on July 21, 1995, in Docket No. CP83–1–113.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20246, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20652 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–332–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 8, 1996.

Take notice that on August 6, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

Second Revised Volume No. 1

Title Page

Second Revised Sheet No. 2
Third Revised Sheet No. 252
Second Revised Sheet No. 263
Second Revised Sheet No. 286
First Revised Sheet No. 288A
Fourth Revised Sheet No. 300
Second Revised Sheet No. 301
Second Revised Sheet No. 304
Second Revised Sheet No. 306
Second Revised Sheet No. 307
Second Revised Sheet No. 310
Second Revised Sheet No. 312
Second Revised Sheet No. 313
Second Revised Sheet No. 315
Second Revised Sheet No. 318
Second Revised Sheet No. 319
Second Revised Sheet No. 332
Second Revised Sheet No. 336
Second Revised Sheet No. 340
Second Revised Sheet No. 343
Fourth Revised Sheet No. 344
Second Revised Sheet No. 345A
Sixth Revised Sheet No. 350
Sixth Revised Sheet No. 351
Fifth Revised Sheet No. 351A
Second Revised Sheet No. 353
Second Revised Sheet No. 355
Second Revised Sheet No. 362
Second Revised Sheet No. 368
Second Revised Sheet No. 369
Second Revised Sheet No. 370

Williston Basin states that it is submitting the following revisions to comply with Commission Order Nos. 582 and 582–A in Docket Nos. RM95–3–000 and RM95–3–001, respectively. The revisions reflect a title page to include a telephone and fax number in compliance with Section 154.102 of the Commission's Regulations; numerous tariff sheets to reflect the correct carrying charge reference to Section 154.501 of the Commission's Regulations; and Sheet No. 362 to reflect the correct Annual Charge Adjustment reference to Section 154.402 of the Commission's Regulations.

Williston Basin states that in addition to the above revisions, it has added language to its FERC Gas Tariff in compliance with Section 154.109 (b) and (c) of the Commission's Regulations, specify the order in which each component of Williston Basin's rates will be discounted and stating Williston Basin's policy with respect to the financing and construction of laterals.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20246, 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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20653 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1295–000, et al.]

Market Responsive Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 7, 1996.

Take notice that the following filings have been made with the Commission:

1. Market Responsive Energy, Inc.

[Docket No. ER95–1295–000]

Take notice that on July 29, 1996, Market Responsive Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Heartland Energy Services, Inc., Valero Power Srvices Company, Illinova Power Marketing, Inc., Tenneco Energy Marketing, Inc., J Anthony & Associates Ltd., Citizens Lehman Power Sales, Federal Energy Sales, Inc.

[Docket No. ER94–108–009, Docket No. ER94–1394–008, Docket No. ER94–1475–005, Docket No. ER95–428–006, Docket No. ER95–784–004, Docket No. ER95–892–005, Docket No. ER96–918–002 (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 30, 1996, Heartland Energy Services, Inc. filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On July 30, 1996, Valero Power Services Company filed certain information as required by the Commission's August 24, 1994, order in Docket No. ER94–1394–000.

On July 31, 1996, Illinova Power Marketing, Inc. filed certain information as required by the Commission's May 18, 1995, order in Docket No. ER94–1475–000.

On July 31, 1996, Tenneco Energy Marketing, Inc. filed certain information as required by the Commission's March 30, 1995, order in Docket No. ER95–428–000.

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 31, 1996, Citizens Lehman Power Sales filed certain information as required by the Commission's June 8, 1995, order in Docket No. ER95–892–000.

On July 31, 1996, Federal Energy Sales, Inc. filed certain information as required by the Commission's March 1, 1996, order in Docket No. ER96–918–000.

3. Howell Power Systems, Inc., Texican Energy Ventures, Inc., Koch Power Services, Inc., Southern Energy Marketing, Inc., IGI Resources, Inc., Hinson Power Company, ANP Energy Direct Company

[Docket No. ER94–178–010, Docket No. ER94–1362–005, Docket No. ER95–218–006, Docket No. ER95–976–005, Docket No. ER95–1034–004, Docket No. ER95–1314–005, Docket No. ER96–1195–001 (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 3, 1996, Howell Power Systems, Inc. filed certain information as required by the Commission's January 14, 1994, order in Docket No. ER94–178–000.

On July 30, 1996, Texican Energy Ventures, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On July 30, 1996, Koch Power Services, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–218–000.

On July 30, 1996, Southern Energy Marketing Inc. filed certain information as required by the Commission's June 27, 1995, order in Docket No. ER95–976–000.

On July 30, 1996, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

On July 29, 1996, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

On July 29, 1996, ANP Energy Direct Company filed certain information as

required by the Commission's May 3, 1996, order in Docket No. ER96–1195–000.

4. Northeast Utilities Service Company

[Docket No. ER96–858–000]

Take notice that on July 29, 1996, Northeast Utilities Service Company (NUSCO) on behalf of Western Massachusetts Electric Company (WMECO) tendered for filing an amendment to the Third Amendment to Distribution and Transformation Service Agreement originally filed by NUSCO on January 10, 1996, for service to New England Power Company (NEP). The amendment revises certain appendices and tables in response to concerns raised by FERC staff on the initial filing.

NUSCO requests the Third Amendment be permitted to become effective on February 1, 1996 or, the day following the date of receipt of this amendment by the Commission.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER96–1585–000]

Take notice that on July 29, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Growth Unlimited Investments, Inc.

[Docket No. ER96–1774–000]

Take notice that on July 17, 1996, Growth Unlimited Investments, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER96–2106–000]

Take notice that Wisconsin Electric Power Company on July 30, 1996, tendered for filing an amendment to its June 10, 1996, filing of revisions to its FERC Electric Tariff, Volume 1, Service Agreement No. 27. The submittal provides further information responsive to questions from FERC staff.

Wisconsin Electric again requests waiver of the notice requirements and an effective date of May 15, 1996, in order to implement the Agreement's modifications, which do not result in revenue increases.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER96–2227–000]

Take notice that on July 30, 1996, Tampa Electric Company (Tampa Electric) amended its filing in this docket, which concerns amendment of a Letter of Commitment between Tampa Electric and the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) under interchange Service Schedule D.

Copies of the amendatory filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER96–2256–000]

Take notice that on July 29, 1996, Central Vermont Public Service Corporation (Central Vermont) tendered for filing additional information in the above-mentioned docket.

Central Vermont requests the Commission to waiver its filing requirements to permit the amendment to become effective according to its terms.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. EMC Gas Transmission Company

[Docket No. ER96–2320–000]

Take notice that on July 26, 1996, EMC Gas Transmission Company tendered for filing an amendment in the above-referenced docket.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER96–2351–000]

Take notice that on July 29, 1996, Washington Water Power Company (WWP) tendered for filing a request to withdraw its earlier filing (FERC Docket No. ER96–2351–000) of Amendment No. 1 to Agreement for purchase and sale of summer capacity and energy and the seasonal exchange of capacity and energy between WWP and Pacificorp.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER96–2362–000]

Take notice that on July 10, 1996, Tucson Electric Power Company (TEP) tendered for filing pursuant to Section 206 of the Federal Power Act (FPA), Section 35.13 of the Federal Energy Regulatory Commission's (''Commission'') Regulations, 18 CFR 35.13, and in compliance with the Commission's Final Rule In Docket Nos. RM95–8–000 and RM94–7–001, ''Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,'' II FERC Stats. & Regs. ¶ 31,036 (Order No. 888), Revised Sheet Nos. 34 through 36 of its Open Access Transmission Tariff (Tariff) which TEP filed on July 9, 1996.

TEP has requested waiver of the Commission's notice requirements of Section 35.7 of the Commission's Regulations, to the extent necessary to allow the Revised Sheet Nos. 34, 35, and 36 filed in this docket to go into effect on July 10, 1996, for good cause shown.

TEP served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the state regulatory authority for each state in which its existing wholesale customers are served.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Maine Electric Power Company

[Docket No. ER96–2379–000]

Take notice that on July 9, 1996, Maine Electric Power Company (MEPCO) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service, the form of which is contained as Attachment B of MEPCO's pro forma tariff for open access transmission service.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Company

[Docket No. ER96–2380–000]

Take notice that on July 9, 1996, Montaup Electric Company (Montaup) tendered for filing unexecuted service agreements for non-firm transmission service under the open access transmission tariff filed the same day. Montaup requests that these service agreements be allowed to become effective July 9, 1996. Montaup will substitute executed service agreements once signatures are obtained.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Minnesota Power & Light Company

[Docket No. ER96–2382–000]

Take notice that on July 11, 1996, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Commonwealth Edison Company
Cinergy Services, Inc. (as Agent for and on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc.)
The Empire District Electric Co.
JPower Inc.
NORAM Energy Services, Inc.
Pan Energy Power Services
WPS Energy Services, Inc.

under its Wholesale Coordination Sales Tariff to satisfy its filing requirements under this tariff.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Maine Public Service Company

[Docket No. ER96–2410–000]

Take notice that on July 9, 1996, Maine Public Service Company (MPS) tendered for filing pursuant to Order No. 888, Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR 35.13, its Open Access Pro Forma Transmission Tariff.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Public Service Company

[Docket No. ER96–2455–000]

Take notice that on July 16, 1996, Maine Public Service Company tendered for filing a Quarterly Report of Transactions for the Period April 1 through June 30, 1996. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Power & Light Company

[Docket No. ER96–2474–000]

Take notice that on July 9, 1996, Puget Sound Power & Light Company, as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service (''Service Agreement) with Puget Sound Power & Light Company, as Transmission Customer (Puget). A copy of the filing was served upon Puget.

Comment date: August 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Rochester Gas and Electric Corporation

[Docket No. ER96–2584–000]

Take notice that on July 31, 1996, Rochester Gas and Electric Corporation (RG&E), tendered for filing proposed changes in its rates for borderline sales to New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation. RG&E is filing the information pursuant to § 35.13 of the Commission's Rules of Practice and Procedure, 18 CFR 35.13. RG&E is requesting an effective date of July 1, 1996, for the rate changes. Accordingly, RG&E has requested waiver of the Commission's notice requirements for good cause shown.

Copies of the filing have been served on New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation and the Public Service Commission of the State of New York.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER96–2585–000]

Take notice that on July 31, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission NMPC's Market-Based Rate Power Sales Tariff, which permits NMPC to make wholesale power sales at market-based rates.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Power and Light Company

[Docket No. ER96–2586–000]

Take notice that on July 31, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and VTEC Energy Inc., Delhi Energy Services Inc., Coral Power L.L.C., and Illinova Power Marketing Inc. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of July 1, 1996.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Central Power and Light Company

[Docket No. ER96–2596–000]

Take notice that on August 1, 1996, Central Power and Light Company (CPL), submitted a service agreement, dated July 9, 1996, establishing NorAm Energy Services, Inc. (NorAm) as a customer under the terms of CPL's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

CPL requests an effective date of July 9, 1996, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon NorAm and the Public Utility Commission of Texas.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. West Texas Utilities Company

[Docket No. ER96–2597–000]

Take notice that on August 1, 1996, West Texas Utilities Company (WTU) submitted a service agreement, dated July 9, 1996, establishing NorAm Energy Services, Inc. (NorAm) as a customer under the terms of WTU's umbrella Coordination Sales Tariff CST–1 (CST–1 Tariff).

WTU requests an effective date of July 9, 1996 and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon NorAm and the Public Utility Commission of Texas.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Central Power and Light Company, West Texas Utilities Company

[Docket No. ER96–2598–000]

Take notice that on August 1, 1996, Central Power and Light Company and West Texas Utilities Company, (jointly, the Companies) tendered for filing a service agreement under which they will provide transmission service to Entergy Services, Inc. (Entergy) under their point-to-point transmission service tariff.

The Companies state that copies of the filing have been served on Entergy.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Company

[Docket No. ER96–2599–000]

Take notice that on August 1, 1996, Commonwealth Edison Company (ComEd), tendered for filing an amendment to its contract with the City of St. Charles, Illinois (St. Charles). The amendment will permit St. Charles to receive curtailable service at selected premises within St. Charles' service territory.

ComEd requests an effective date of August 2, 1996, and has, therefore, requested that the Commission waive the Commission's notice requirement. Copies of this filing have been served on St. Charles and the Illinois Commerce Commission.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER96–2600–000]

Take notice that on August 1, 1996, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the Companies) tendered for filing a service agreement under which they will provide transmission service to Entergy Services, Inc. (Entergy) under their point-to-point transmission service tariff.

The Companies state that a copy of the filing has been served on Entergy.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. DPL Energy, Inc.

[Docket No. ER96–2601–000]

Take notice that on August 1, 1996, DPL Energy, Inc. (DPL Energy), filed with the Federal Energy Regulatory Commission an application seeking authorization to engage in power marketing transactions as an affiliated power marketer subject to the Commission's established policies and precedents.

DPL Energy requests that it be permitted to engage in marketing and brokering activities as soon as possible but in no event later than October 1, 1996.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Dayton Power & Light Company

[Docket No. ER96–2602–000]

Take notice that on August 1, 1996, the Dayton Power and Light Company (DP&L), filed with the Federal Energy Regulatory Commission a market-based sales tariff.

DP&L requests that its tariff be accepted for filing and allowed to become effective as soon as possible but in no event later than October 1, 1996.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. South Carolina Public Service Authority

[Docket No. NJ96–1–000]

Take notice that on July 9, 1996, the South Carolina Public Service Authority (Authority) tendered for filing a compliance filing in the above referenced docket. The Authority requests that the Commission issue an order finding that its open access transmission tariff is an acceptable reciprocity tariff. The Authority submitted with its compliance filing its open access tariff and cost information to support its ancillary services charges.

Comment date: August 21, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Interstate Energy Corporation

[Docket No. OA96–133–000]

Take notice that on July 29, 1996, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, IES Utilities Inc. (IES), Interstate Power Company (IPC), Wisconsin Power & Light Company (WPL) and South Beloit Water, Gas & Electric Company (South Beloit) (collectively, the Applicants) submitted for filing a single Open Access Transmission Tariff based on the *pro forma* tariff included by the Commission in Order No. 888.

The Applicants state that they are making this filing in connection with the proposed merger of WPL Holdings, Inc. (the holding company parent of WPL and, indirectly, South Beloit), IES Industries Inc. (the holding company parent of IES) and IPC. The transmission service will be provided on the combined transmission systems of the Applicants under a single-system rate. The Applicants state that they are filing this tariff on behalf of the proposed new holding company, Interstate Energy Corporation. The Applicants request that the Commission waive the 120-day notice requirement contained in section 35.3 of the Commission's regulations to allow the tariff to be accepted for filing and put into effect on the date that the merger transactions are consummated.

Comment date: August 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

The prior notice of filing setting an August 8, 1996 comment date in Docket No. OA96–133–000 is hereby rescinded.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–20655 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–667–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

August 8, 1996.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP96–667–000]

Take notice that on July 25, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP96–667–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service which was authorized in Docket Nos. CP76–492 and CP77–519, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Columbia proposes to abandon transportation service which was once required for the transportation of gas by Columbia for Orange and Rockland Utilities, Inc. (Orange and Rockland). This service which was performed under Columbia's Rate Schedule X–97, was authorized by the Commission's Opinion and Order issued June 21, 1979, at 7 FERC 61,278 (1979) at Docket No. CP76–492, et al., which included, inter alia, Columbia's Docket No. CP77–519.

Pursuant to the terms of a transportation agreement dated April 4, 1977, Columbia agreed to deliver up to 1,000,000 Mcf of natural gas annually to Tennessee Gas Pipeline Company (Tennessee) for the account of Orange and Rockland for storage injection. This gas was purchased by Orange and Rockland from Columbia under its CDS Rate Schedule and was delivered by Columbia to Tennessee during the summer injection period at Tennessee's existing South Ceredo, West Virginia sales meter station delivery point to Columbia or at other mutually agreeable points of interconnection.

Columbia further agreed to receive during the winter withdrawal period up to 10,000 Mcf of gas per day (up to 1,000,000 Mcf annually) from Tennessee at Tennessee's existing Milford, Pennsylvania sales meter station

delivery point to Columbia or at other mutually agreeable points of interconnection. Columbia transported the withdrawal gas on an interruptible basis and redelivered it to Orange and Rockland at existing points of delivery in eastern New York.

Orange and Rockland agreed to pay Columbia a transportation charge which reflected Columbia's average system-wide unit storage and transmission costs, exclusive of company-use and unaccounted for gas, as reflected in rate filings of Columbia. The charges were subject to adjustment as reflected in pending and future rate filings. Also, Columbia retained for company-use and unaccounted-for gas a percentage of the total gas volumes received by Columbia for transportation to Orange and Rockland. This percentage of retention was adjusted from time to time to reflect changes in its operation.

Comment date: August 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

[Docket No. CP96–674–000]

Take notice that on July 29, 1996, CNG Transmission Corporation (CNG), P.O. Box 2450, Clarksburg, West Virginia, 26302–2450, filed in Docket No. CP96–674–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval and permission to install a new delivery point, under the blanket certificate issued in Docket No. CP82–537–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG states that it proposes to install a tap and appurtenant facilities to serve as a new delivery point to T. W. Phillips Gas and Oil Company, a local distribution company in Allegany County, Pennsylvania. It is indicated that Phillips will install meter and regulation equipment adjacent to CNG's Line TL–469 for Phillips' system supply obligations. It is further indicated that the annual deliveries through the proposed facilities will not exceed 3,650,000 Mcf. CNG asserts that it will transport natural gas to Phillips under existing, certificated transportation arrangements with Phillips. CNG further asserts that the estimated construction costs of the proposed facilities is $75,000.

Comment date: September 23, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation, CNG Transmission Corporation

[Docket No. CP96–681–000]

Take notice that on July 30, 1996, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302–2450, herein referred to as Applicants, filed in Docket No. CP96–681–000, a joint abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for an order granting permission and approval to abandon an exchange service agreement between the Applicants, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that the exchange service is governed by Rate Schedules X–54 for Texas Eastern and X–3 for CNG. Applicants further state that they have agreed to terminate the exchange service pursuant to the terms and conditions of a termination agreement dated March 7, 1995.

Comment date: August 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP96–685–000]

Take notice that on July 31, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–685–000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization: (1) To replace and relocate the Oswego town border meter setting and, after the relocation and replacement, (2) to abandon by sale to Western Resources, Inc. approximately 1.2 miles of 4-inch lateral pipeline downstream of the new meter site, all located in Labette County, Kansas, 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 proposes to reclaim the Oswego double run 3-inch orifice meter and regulator setting and to relocate and install a new dual 3-inch rotary meter and regulator setting in Labette County, Kansas. WNG states that the Oswego town border meter setting was originally installed in 1932 and that the installation of a new rotary meter setting will provide for more accurate measurement at low volumes. WNG estimates that the cost to replace the Oswego town border setting to be $50,786 and the sales price of the 4-inch lateral pipeline to be $10,000.

Comment date: September 23, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP96–689–000]

Take notice that on August 2, 1996, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP96–689–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to operate in interstate commerce certain existing gathering lines located in Potter, Moore and Hartley Counties, Texas, for the purpose of providing fuel gas from CIG's transmission system to three field compressor stations, all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG requests authorization to operate existing nonjurisdictional gathering lines consisting of approximately 10.0 miles of 10-inch-diameter and 1.3 miles of 14-inch-diameter pipelines. The lines will be used to provide processed gas from CIG's transmission system for use as fuel gas to nonjurisdictional field compressors No. 3, No. 25 and No. 27 located in the Panhandle Field of Texas.

CIG states that the three field compressors are currently using unprocessed fuel which is resulting in a loss of efficiency and increased maintenance. CIG believes that providing processed gas to the field compressors will provide for more efficient operation of these compressor stations and decrease maintenance requirements. CIG states that there are no new facilities proposed except for minor yard piping to connect the processed gas to the compressor units.

CIG proposes to backflow processed gas from its transmission system through an existing certificated line of approximately 2.55 miles that will connect with the existing 14-inch-diameter line for the delivery of the fuel gas to the three field compressors.

Comment date: August 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP96–693–000]

Take notice that on August 5, 1996, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP96–693–000 an

application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided for Louisville Gas and Electric Company (LG&E) by Texas Gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to abandon a transportation service performed for LG&E pursuant to a contract between Texas Gas and LG&E dated November 1, 1993 (Agreement). Texas Gas states the Agreement provides for Texas Gas to transport up to 30,000 MMBtu per day (winter and summer) for LG&E on a firm basis under Rate Schedule FT, and is authorized pursuant to Section 284.223 of the Commission's regulations and the blanket certificate issued to Texas Gas in Docket No. CP88–686–000.

Texas Gas states that by letter dated October 23, 1995, LG&E notified Texas Gas of its desire to terminate the Agreement effective November 1, 1996, at the end of its first roll-over term. Texas Gas states that in its Order No. 636 restructuring case (Docket No. RS92–24), the Commission approved the designation by Texas Gas of a certain class of transportation agreements which would not be terminated without prior Commission approval, and that the subject Agreement is one of those listed in Section 32.3 of Texas Gas's FERC Gas Tariff as requiring specific prior Commission approval before abandonment would be authorized. Thus, by this application, Texas Gas seeks authority to abandon service to LG&E under the Agreement effective November 1, 1996.

Comment date: August 29, 1996, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 96–20689 Filed 8–13–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5553–4; OMB No. 2060–0202]

Agency Information Collection Activities Up For Renewal; New Source Performance Standards For Small Industrial-Commercial-Institutional Steam Generating Units, Expiration Date 9/30/96

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESSES: United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, S.W. Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Rafael Sánchez, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, S.W. Telephone: (202) 564–7028. Facsimile: (202)564–0039. Internet: Sanchez.Rafael@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are those steam generating units for which construction, modification or reconstruction is commenced after June 29, 1989, and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour(Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

Title: New Source Performance Standards (NSPS) for Small Industrial-Commercial-Institutional Steam Generating Units—40 CFR Part 60, Subpart Dc, OMB No. 2060–0202, Expiration Date: 9/30/96.

Abstract: The NSPS for Subpart Dc were proposed on June 9, 1989 and promulgated on September 12, 1990. These standards apply to steam generating units with a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour(Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) commencing construction, modification or reconstruction after the date of proposal. The pollutants regulated under this subpart include sulfur dioxide (SO_2) and particulate matter (PM).

Owners or operators of the affected facilities described must make the following one time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or

operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are required, in general, of all sources subject to NSPS.

The standards require reporting of the results of the initial performance test to determine compliance with the applicable SO_2 and/or PM standards. For units using a continuous emission monitoring system (CEMS) to determine compliance with the SO_2 standard, the regulation requires submittal of the results of the CEMS demonstration.

After the initial report, the standard for SO_2 requires each affected facility to submit quarterly compliance reports. After the initial report, the standard for PM requires quarterly reports to be submitted to notify of any emissions exceeding the applicable opacity limit. If there are no excess emissions, a semiannual report stating that no exceedences occurred may be submitted.

The recordkeeping requirements for small industrial-commercial-institutional steam generating units consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results, including the applicable sulfur dioxide and/or particulate matter results. Records of startups, shutdowns, and malfunctions should be noted as they occur. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements.

The reporting requirements for this type of facility currently include the initial notifications listed, the initial performance test results, and quarterly report of SO_2 emissions, and instances of excess opacity. Semiannual opacity reports are required when there is no excess opacity. Semiannual excess emission reports and monitoring system performance reports shall include the magnitude of excess emissions, the date and time of the exceedence or deviance, the nature and cause of the malfunction (if known) and corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments).

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Most of the industry costs associated with the information collection activity in the standards are labor costs. The current average annual burden to industry from these record keeping and reporting requirements is estimated at 229,674 person-hours. The respondent costs have been calculated based on $14.50 per hour plus 110 percent overhead. The current average annual burden to industry is estimated to be $6,993,568.

Based upon available information, it has been estimated that approximately 212 sources are currently subject to the standard, and it is estimated that an additional 71 sources per year will become subject to the standard.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: August 1, 1996.

Elaine Stanley,

Director, Office of Compliance.

[FR Doc. 96–20700 Filed 8–13–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–30000/18F; FRL–5386–5]

Ethylene Bisdithiocarbamates (EBDCs); Announcement of Modifications to Existing EBDC Cancellation Orders and Issuance of New Cancellation Orders for Four Crops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Two Modifications to EBDC Cancellation Orders and Issuance of New Cancellation Orders.

SUMMARY: The EBDC Notice of Intent to Cancel (NOIC) (PD 4) was published in the Federal Register of March 2, 1992 (57 FR 7484) and announced the Agency's intent to cancel certain EBDC product registrations. This document announces three actions which have occurred since the publication of the NOIC. The three actions are: (1) May 28, 1992 modification of the pre-harvest interval on potatoes, (2) August 3, 1994 modification allowing the use of more than one EBDC per crop per season, and (3) February 1, 1996 issuance of the Cancellation Order for four leafy green crops - collards, mustard greens, turnips, and spinach -except for limited use in Georgia and Tennessee.

FOR FURTHER INFORMATION CONTACT: Amy Porter, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Telephone: (703) 308–8054, e-mail: porter.amy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document announces two previous modifications to the EBDC Cancellation Order and the issuance of an additional Cancellation Order cited in the summary above. This document is organized into four units. Unit I is the Regulatory Background. Unit II is the announcement of a previous modification to the Cancellation Order related to the use of EBDCs on Potatoes. Unit III is the announcement of a previous modification to the Cancellation Order related to the use of more than one EBDC on one crop during one season. Unit IV announces the issuance of a Cancellation Order for Collards, Mustard Greens, Turnips, and Spinach.

I. Regulatory Background

The EBDCs are a group of pesticides consisting of four registered active ingredients: mancozeb, maneb, metiram, and nabam. They are used primarily as protectants against fungal pathogens on apples, cucurbits (i.e., cucumbers,

melons, pumpkins and squash), lettuce, onions, potatoes, small grains, sweet corn, and fungal and bacterial pathogens on tomatoes. Nabam is currently registered as an industrial biocide; all registrations of nabam for agricultural uses have been voluntarily canceled (54 FR 50020) and currently there are no established tolerances.

The regulatory history of the EBDCs is described in detail in the March 2, 1992 Notice of Intent to Cancel and Conclusion of Special Review (57 FR 7484), the PD 4. In brief, EPA has twice initiated a Special Review of the EBDCs. In 1977, EPA initiated a Rebuttable Presumption Against Registration, or RPAR, (later referred to as a Special Review) based on the presumption that the EBDCs and ETU, a common contaminant, metabolite, and degradation product of EBDCs, posed the following potential risks to humans and/or the environment: carcinogenicity, developmental toxicity, and acute toxicity to aquatic organisms. In 1982, EPA concluded this RPAR by issuing a PD 4, which announced measures designed to preclude unreasonable adverse effects pending development of additional data needed to arrive at a more realistic assessment of the risks. At that time, EPA deferred a decision on carcinogenic effects because of the lack of sufficient information to estimate risk.

On July 17, 1987, EPA initiated a second Special Review by issuing a Notice of Initiation of Special Review of the EBDC pesticides because of carcinogenic, developmental, and thyroid effects caused by ETU (52 FR 21772).

On September 6, 1989, the four technical registrants of mancozeb, maneb, and metiram (Elf Atochem, BASF, DuPont, and Rohm and Haas) requested that EPA amend their registrations to delete 42 of the 55 registered food uses and to restrict formulation of their technical products only into products labeled for the 13 retained uses. These amendments were accepted on December 4, 1989 (54 FR 50020) and made effective December 14, 1989. The thirteen remaining uses on affected EBDC labels were: almonds, asparagus, bananas, caprifigs, cranberries, grapes, onions, peanuts, potatoes, sugar beets, sweet corn, tomatoes, and wheat.

EPA issued a Notice of Preliminary Determination (also known as a PD 2/3) on December 20, 1989 (54 FR 52158) announcing its proposed decision to cancel all but 10 uses on the basis of unreasonable risk and a lack of support by the registrants. Forty-two of these were deleted by the registrants and three additional uses were proposed for cancellation by the Agency.

On May 16, 1990 (55 FR 20416) EPA issued a proposal to revoke and reduce tolerances for the 42 deleted uses plus the three additional uses proposed for cancellation.

On March 2, 1992 (57 FR 7484) EPA published in the Federal Register a Notice of Intent to Cancel and Conclusion of Special Review (PD 4). Based on information and comments received in response to the PD 2/3 and data submitted by registrants in response to a March 10, 1989 Data Call-In, EPA revised its risk and benefits assessments. EPA determined that 45 of the 56 uses posed acceptable risks and 11 of the 56 crops posed unreasonable risks. (The 56 uses referred to in the PD 4 were inadvertently referred to as 55 in the PD 2/3.) All maneb, mancozeb, and metiram registrations for products with these 11 uses would be canceled unless these uses were deleted from all EBDC labels. The 11 food uses were: apricots, carrots, celery, nectarines, peaches, rhubarb, succulent beans, collards, mustard greens, spinach, and turnips. Since publication of the NOIC, all product registrations with one or more of the following eight food uses have been canceled or amended to delete the affected uses: apricots, carrots, celery, nectarines, peaches, rhubarb, succulent beans, and spinach. (Collards, mustard greens, and turnips were not canceled, but use has been modified as per a settlement agreement. See Unit IV of this notice for discussion.)

Further, EPA determined that the remaining 45 food uses did not pose an unreasonable risk provided certain use restrictions specified in the PD 4 were incorporated into all EBDC product registrations and labeling. The 45 uses subject to the specified modifications to terms and conditions of registrations were: almonds, apples, asparagus, bananas, barley, broccoli, Brussels sprouts, cabbage, cauliflower, corn (field, sweet and pop), cotton, cranberries, crabapples/quince, cucumbers, dry beans, eggplant, endive, fennel, grapes, kadota figs, kale, kohlrabi, lettuce (head and leaf), melons: cantaloupe, casaba, crenshaw, honeydew, watermelon, oats, onions (dry bulb and green), papayas, peanuts, pears, pecans, peppers, potatoes, pumpkins, rye, squash, sugar beets, tomatoes, and wheat.

II. Modified Cancellation Order Regarding the Use of EBDCs on Potatoes

A. Background

The 1992 NOIC included certain requirements which product registrations for potato use had to satisfy to avoid cancellation. For a product to remain registered for potato use, the registrations had to be amended to include directions for use including maximum application rates, maximum number of applications per season, application interval, and pre-harvest interval (PHI). The Agency allowed a minimum 3–day PHI in Connecticut, Florida, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Vermont, and Wisconsin due to disease pressures caused by late blight. A 14–day PHI was required in all other states.

At the time the NOIC was issued, the Agency had no information suggesting that Delaware, Michigan and Ohio had a late blight problem and included those states among the states subject to a minimum 14–day PHI. Subsequent to the NOIC being issued, a group of registrants and growers submitted to the Agency information on late blight supporting a minimum 3–day PHI for Delaware, Michigan and Ohio. This group (petitioners) requested a hearing to add these three states to the list of states for which a 3–day PHI was permitted.

Additionally, at the time the Agency issued the NOIC, it understood that the ''New England'' states as well as some other states had a late blight problem and allowed a minimum three day PHI for those states. Rhode Island was erroneously omitted from the list of states.

B. Potato--Pre-harvest Interval

1. *Risks.* Based on data received after the publication of the PD 4 and the PD 4 risk estimates, the Agency determined that the changes proposed would not result in any significant changes in risk caused by EBDC/ETU.

2. *Benefits.* The Agency understood that quality and yield impacts were likely to occur in potato growing states where late blight was present. Prior to the publication of the PD 4, the Agency was not aware of the existence of late blight on potatoes in Delaware, Michigan, or Ohio. When the Agency became aware of the late blight problems in these states, the Agency determined that quality and yield impacts would likely occur.

3. *Risk/benefit conclusion.* The Agency determined that in the states with substantial late blight occurrence, the benefits outweigh the risk associated with a 3–day PHI.

4. *Provisions of use.* On May 28, 1992, a settlement agreement was reached allowing a 3–day PHI in Delaware, Michigan and Ohio on the basis of late blight problems in those states. The Agreement also included the addition of

Rhode Island to the list of other New England states for which a 3–day PHI was allowed. (Ref. 1)

III. Modified Cancellation Order Regarding the Use of More Than One EBDC on One Crop During One Season

A. Background

The March 2, 1992 NOIC contained a requirement that, to avoid cancellation, all EBDC labels and product registrations bearing agricultural uses must be amended to include the following label statement: ''If this product is used on a crop, no other product containing a different EBDC active ingredient may be used on the same crop during the same growing season.'' This requirement prohibited the use of more than one EBDC active ingredient per crop per season. Although the reason for this requirement was not stated in the NOIC, the Agency's decision to limit EBDC application as such was to avoid the potential overuse of EBDC's through active ingredient switching. The decision was not based on specific risk concerns or on the risk calculations underlying the Agency's EBDC regulatory decision.

Subsequent to the NOIC becoming an effective order of cancellation, the Agency received a request for a hearing from Elf Atochem and Griffin Corporations (petitioners) with supporting letters from the Florida Fruit and Vegetable Association and the National Potato Council to replace the label requirement which allowed the use of only one EBDC per crop per season and prohibited certain seed treatment applications.

A hearing was granted under subpart D of 40 CFR part 164, 40 CFR 164.130 - 164.133. 40 CFR part 164, subpart D allows the Administrator to consider modifying a prior cancellation decision if the petitioner presents substantial new evidence which may materially affect the prior cancellation order and which was not available to the Administrator at the time the final cancellation determination was made, and this evidence could not, even with due diligence, have been discovered by the petitioner prior to the issuance of the final order.

The petitioner's hearing request was found to meet these criteria and a hearing was held on June 20, 1994. At this hearing, the petitioners successfully demonstrated that since the issuance of the NOIC, there had been considerable confusion in the marketplace and an unexpected impact on the benefits of use. (See detailed discussion of benefits below.) In light of the petitioners' evidence and reasoning, the Administrator modified the Cancellation Order on July 8, 1994 to reflect the proposed language. (Refs. 2 and 3)

Estimated risks/label change. The petitioners did not submit any new information which would affect the validity of the Agency's analysis of the toxicity of EBDCs or the methodology used to estimate exposure to EBDCs. The petitioners asserted that the proposed language did not increase the individual or seasonal application limits and provided equivalent protection in terms of limiting exposure while addressing the Agency's concerns about multiple EBDC use as well as having the added advantage of being more easily understood. The petitioners further asserted that the decision to restrict EBDC use as per the restrictive language of the NOIC was not based on specific risk concerns but on concerns of exceeding maximum amount of product allowed per crop per season. The Agency agreed with the petitioner's assertions, and agreed that there are other disincentives to growers that should dissuade them from engaging in that type of practice, such as the risk of having crops with over-tolerance residues. The Agency concluded that the proposed label change would not result in a change in EBDC risk.

Estimated benefits/label restriction. The petitioner's submission included information and evidence on the benefits of using more than one EBDC active ingredient per crop per season which was not available to or considered by the Agency prior to the final Cancellation Order. The petitioners asserted that the current label restriction had a substantial impact on the industry, including negative effects on competition, industry-wide confusion, and hardship for suppliers and growers alike. The Agency agreed with the points included in the submission which are summarized below:

The post PD 4 label specification precluded growers from switching among EBDCs for any reason, even if a particular product was high priced due to limited availability or if a particular product was unavailable.

Many potato growers were required by contract with food processors or packers to make pre-storage applications of Ridomil® (metalaxyl) which contains mancozeb, because consultants and researchers have strongly recommended this as a way to prevent root rot or late blight. This, coupled with the post PD 4 prohibition on switching among EBDC active ingredients, precluded any potato grower under such a contract from using any EBDC but mancozeb on that crop for the remainder of the season—even though it may not have been the most effective treatment for the pest. The Agency agreed with petitioners that there is increased risk of resistance when the range of active ingredients is limited.

Fungal problems associated with potatoes include root rot or late blight which is commonly treated with a metalaxyl product that is considered most effective when it is used in a metalaxyl/EBDC mix. Product mixes (as opposed to tank mixes) are preferred because of their convenience, ease in handling, reduced potential exposure, and reduced costs. Post PD 4 labeling precluded growers from using metalaxyl/EBDC mixes such as Ridomil Mz® (metalaxyl and mancozeb) if they had used maneb earlier in the season. This limited growers to using metalaxyl without an EBDC which may be a less effective treatment and may have limited the potatoes' marketability.

Reliability of supply was of concern for growers. All EBDC active ingredients are manufactured abroad and domestic suppliers have little control over ensuring their steady supply. The failure of a foreign supplier or manufacturer to deliver the active ingredients as scheduled can result in the shortage of a particular formulation. This was creating problems for growers who were bound by post PD 4 label specifications to use a specific active ingredient.

The submission provided evidence of the registrant/marketplace/grower confusion that resulted from the post PD 4 language that was not available at the time of the NOIC. The submission provided examples in which misinterpretations of the language were printed in a grower group newsletter and a journal.

The misinterpretations of the language differed substantially from the EPA's post-cancellation order interpretation which was explained in a 5/26/92 letter from Jack Housenger/EPA to Janet Ollinger (Ref. 4) which clearly limited only switching among active ingredients and did not restrict switching among different brands of the same EBDC active ingredient. Petitioners asserted that this confusion was likely to influence purchasing decisions and create unfair advantages for certain products while undermining integrated pest control practices.

Risk/benefit conclusion. The Agency had attempted to clarify this issue, but even with clarification, unintended impacts continued. The Agency recognized that the label language required by the NOIC created confusion and therefore there were

implementation problems in the marketplace and at the grower level. It is obvious from the information provided at the hearing that the confusion continued even after the Agency attempted to clarify the requirement and its intent. The Agency agreed that the previous label restriction was inconsistent with the nature of Integrated Pest Management (IPM) programs which are based on selective use of different classes of pesticides, and recognized letters of support from the Florida Fruit and Vegetable Association and the National Potato Council for changing the EBDC label language. The Agency agreed that the revised language adequately addressed the objective of the original language, did not increase risk from EBDCs, and reduced impacts to growers.

Provisions of use/label change. The language proposed by the petitioners allowed the use of more than one EBDC active ingredient per crop per season, specified formulas to follow for maximum poundage allowed when different EBDCs are used, and allowed for a single seed treatment per crop per season in addition to the foliar applications where the crop has a registered seed treatment use. The language approved by the Agency to replace the previous statement, if requested, is as follows:

Foliar Applications:

Where EBDC Products Used Allow the Same Maximum Poundage of Active Ingredient Per Acre Per Season:

If more than one product containing an EBDC active ingredient (maneb, mancozeb, or metiram) is used on a crop during the same growing season and the EBDC products used allow the same maximum poundage of active ingredient per acre per season, then the total poundage of all such EBDC products used must not exceed any one of the specified individual EBDC product maximum seasonal poundage of active ingredient allowed per acre.

Where EBDC Products Used Allow Different Maximum Poundage of Active Ingredient Per Acre Per Season:

If more than one product containing an EBDC active ingredient is used on a crop during the same growing season and the EBDC products used allow different maximum poundage of active ingredient per acre per season, then the total poundage of all such EBDC products used must not exceed the lowest specified individual EBDC product maximum seasonal poundage of active ingredient allowed per acre.

Seed Treatment:

In addition to the maximum number of foliar applications permitted by the formula stated above, a single application for seed treatment may be made on crops which have registered seed treatment uses.

IV. Cancellation Order for Collards, Mustard Greens, Turnips, and Spinach

Background. As discussed above, the NOIC of March 2, 1992 announced the Agency's decision to cancel 11 uses including collards, mustard greens, turnips (includes tops), and spinach. The NOIC stated that under FIFRA section 6(b), persons adversely affected by the Notice could request a hearing within 30 days of receipt of the Notice or 30 days from the date of publication. A hearing request was submitted by the American Food Security Coalition (AFSC), a group of Georgia leafy greens growers, and United Foods, Inc. (the petitioners) regarding cancellation of the use of EBDCs on collards, mustard greens, turnips, and spinach. (Ref. 5)

On June 25, 1993, the Court granted a motion which stated that the Agency and the petitioners had initiated settlement discussions and that the petitioners had developed new scientific data that the Agency would review. The parties were required to file monthly status reports while reviews and negotiations were conducted.

The petitioners conducted field trial residue studies for maneb on collards, mustard greens and turnips at use rates lower than those previously allowed. These reports were submitted to the Agency in December of 1993. Reviews of these studies and negotiations continued through February 1, 1996 when the proceedings were concluded with the Settlement Agreement between the petitioners and the Agency. (Refs. 5 and 6) This agreement canceled all EBDC uses on collards, mustard greens, turnips, and spinach - except limited use on collards, mustard greens, and turnips in Georgia and Tennessee, and announced the petitioners' withdrawal of their hearing request.

Treated greens-risks. The Agency determined in the PD 4/NOIC that the dietary risk of continued use of EBDCs on collards, mustard greens, and turnips exceeded the benefits based on the evidence available at the time. The PD 4 risk assessment for these crops was based on pre-PD 4 labels which allowed an unlimited number of applications with no application intervals, required a 10–day pre-harvest interval, limited the maximum rate per application to 2.4 lbs a.i., and permitted nationwide use.

The petitioners claimed that the dietary exposure estimates used for the leafy greens in the PD 4 (field trial data) were based on residue estimates significantly higher than the estimates that would be expected from market basket data, with adjustments for washing and processing. The petitioners submitted residue data from new maneb field trials conducted on collards, mustard greens, and turnips in Georgia and Tennessee. These data reflect use rates lower than those previously allowed.

Post PD 4 risk assessment. The field trial data were reviewed on January 25, 1994. (Ref. 7) Using the cancer potency factor (Q_1*) of 0.11 $(mg/kg/day)^{-1}$ as had been used for the PD 4, and assuming 100% crop treated, risk was estimated for a variety of registration scenarios and population groups (Refs. 8, 9, 10, and 11). The risk from treated greens to the general population was estimated to be 1.0×10^{-6} and risk to non-Hispanic blacks (the most sensitive sub-population) was estimated to be 5.8×10^{-6}. (A cancer risk of 5.8×10^{-6} indicates that the individual has an estimated 5.8 out of 1 million chance of developing cancer over a lifetime due to exposure to the chemical.) The risk to Non-Hispanic Blacks is higher than the general population because of higher reported consumption. The Agency considered the risk to non-Hispanic blacks to be unacceptable.

The Agency met with the petitioners in September 1994 to convey the determination that risk continued to outweigh benefits.

Revised Post PD 4 risk assessment. Subsequent to the September 1994 meeting with the petitioners, two significant factors led the Agency to reassess the risk of these uses — a revised interspecies scaling factor was adopted by the Agency, and additional information was submitted regarding percent crop treated.

In late 1994, the Agency adopted the Unified Interspecies Scaling Factor for translation of animal bio-assays to humans. Because this factor is used in calculating the Q_1*, the Agency adjusted the Q_1* from 0.11 to 0.06. The revised Q_1* resulted in a revised risk estimate for the 45 retained uses, which decreased from 1.6×10^{-6} to 0.9×10^{-6} for the general population. Risk estimates for greens for the general population decreased from 1.0×10^{-6} to 4.6×10^{-7} and for non-Hispanic blacks decreased from 5.8×10^{-6} to 2.6×10^{-6}. (Ref. 12)

Percent crop treated is the number of acres of treated crop divided by the total number of acres of a crop grown in the United States if a crop is only treated in certain areas of the United States, then the Agency would normally assume that the percent crop treated was the same as the percent of nationwide acreage grown in a particular area. Originally, EPA used the conservative assumption that in certain areas all of the leafy greens being marketed would have been treated with maneb (100% crop treated). This

was based on EPA's belief at the time that leafy greens markets were relatively static and that certain supermarket chains or regions would tend to sell, over long periods of time, leafy greens grown in the same area.

In May, 1995, however, the petitioners argued that a better way to estimate the percent crop treated with maneb would be to take into account the relative percentage of the leafy green crops grown in Georgia and Tennessee. Turnips, collards, and mustard greens grown in these states represents 22%, 31%, and 36% of national production, respectively. In support of this request, petitioners provided market distribution data for Georgia and Tennessee grown greens. The information submitted demonstrated that Georgia and Tennessee greens are distributed nationally, as are greens from other states, and that in any given region the source of greens varies with the season and with changes in marketing contracts. This information convinced the Agency that there was no need to assume that individuals would be exposed to 100% maneb-treated leafy greens over their lifetime. Instead, the Agency assumed that 100% of these leafy greens grown in Georgia and Tennessee (and 0% elsewhere) would be treated, resulting in a nationwide percent of crop treated of 22% for turnips, 31% of collards, and 36% of mustard greens.

The Agency's final risk assessment based on the 1993 leafy greens data is presented in detail in the Health Effects Division's 2/21/95 Review of Potential Section 18 use, and the corresponding DRES Analysis dated 3/23/95. (Refs. 12 and 13) The final risk estimate for maneb on greens only with the revised Q_1* and the 22/31/36 Georgia and Tennessee percent crop treated assumption, is 1.3×10^{-7} for the general population and 7.1×10^{-7} for non-Hispanic blacks.

Treated greens--benefits. At the time of the PD 4, the Agency anticipated significant impacts from the loss of use of EBDC on the three greens. The estimated impacts were $13 - $31 million, and this was confirmed by yield loss information reported after the PD 4. The current estimates are consistent with those from the PD 4.

Treated greens--risk/benefit conclusion. In the PD 4, the Agency used cost-effectiveness to compare risks and benefits among uses. Cost-effectiveness is a tool used to compare the impact to society associated with the loss of use (cost) on a particular site to the estimated reduction in risk of that site (effectiveness). For the EBDCs, the cost-effectiveness refers to the societal cost per cancer case avoided for a specific use. Although the cost estimates for the greens have not changed since the PD 4, the risk estimates have decreased significantly, bringing the cost-effectiveness ratios to an acceptable range. The current cost-effectiveness estimates for collards, mustard greens, and turnips are consistent with the PD 4 estimates for the other retained uses.

The revised risk from all EBDC treated crops combined, including the addition of Georgia and Tennessee treated greens, is estimated to be 1.6×10^{-6} for non-Hispanic blacks — the level determined to be acceptable at the PD 4, with comparable cost-effectiveness ratios. The revised risk to the general population is 1.0×10^{-6} which is lower than risk estimated at the PD 4. Based on current estimates, EPA concludes that risk does not outweigh benefits, provided that the use is limited to the use of maneb on leafy greens in Georgia and Tennessee only at the use rates specified below.

Treated greens--provisions of use. As finalized by the February 1, 1996 Settlement Agreement, all EBDC/maneb uses on collards, mustard greens, turnips, and spinach other than the uses in the following Table 1 for Maneb 75DF or Maneb 80WP in Georgia and Tennessee only, are now canceled:

TABLE 1.—APPLICATION RATES FOR MANEB 75DF AND MANEB 80WP

(Georgia and Tennessee only)

Crop	Collards	Turnips (Varieties grown for greens only)	MustardGreens
Number of Applications Per Cutting.	3	1	2
Interval between Applications.	14 days	N/A	14 days
Pre-Harvest Interval	14 days	14 days	14 days
Rate Per Application	1.2 lb active ingredient per acre	1.2 lb active ingredient per acre	1.2 lb active ingredient per acre
Rate Per Cutting	3.6 lb active ingredient per acre	1.2 lb active ingredient per acre	2.4 lb active ingredient per acre

References

The following sources are referenced in this document.

1. IN RE: American Food Security Coalition (AFSC), et al. Joint Motion for Accelerated Decision and Settlement Agreement. May 28, 1992. FIFRA Hearing Docket 646.

2. IN RE: Elf Atochem of North America, Inc. and Griffin Corporation. Initial Decision, Recommended Order. July 8, 1994. FIFRA Hearing Docket 657.

3. IN RE: Elf Atochem of North America, Inc. and Griffin Corporation. Order Declining Review. August 3, 1994. FIFRA Hearing Docket 657.

4. Housenger, Jack. Response to April 14, 1992 letter regarding the ''Restriction Statement Required in the PD 4.'' May 26, 1992.

5. IN RE: American Food Security Coalition (AFSC), et al. Joint Motion for an Accelerated Decision and Order and Settlement Agreement. January 31, 1996. FIFRA Hearing Docket 646.

6. IN RE: American Food Security Coalition (AFSC), et al. Accelerated Decision and Order. February 1, 1996. FIFRA Hearing Docket 646.

7. Hummel, Susan V. Maneb on Collards/ Field Trials, Residue Decline Studies, Reduction of Residue Study, Final Reports. January 25, 1994.

8. Griffin, Richard. EBDC/ETU Special Review. DRES Dietary Exposure and Risk Estimates for Use of Maneb on Collards, Mustard Greens, and Turnip Tops. Estimates Based on New Residue Studies. February 3, 1994.

9. Griffin, Richard. EBDC/ETU Special Review. DRES Dietary Exposure and Risk Estimates for Use of Maneb on Collards, Mustard Greens, and Turnip Tops. March 11, 1994.

10. Griffin, Richard. EBDC/ETU Special Review. DRES Dietary Exposure and Risk Estimates for Use of Maneb on Collards, Mustard Greens, and Turnip Tops. March 18, 1994.

11. Griffin, Richard. Special Review for Maneb (EBDC) Use on Turnips, Collards, and Mustard Greens. DRES Dietary Exposure and Risk Estimates. June 3, 1994.

12. Griffin, Richard. Special Review. DRES Dietary Exposure and Risk Estimates for Proposed Section 18 Use of Formulations

Containing Metalaxyl, Maneb, Mancozeb, and Chlorothalonil. March 23, 1995.

13. Hummel, Susan V. Potential Section 18 use on Turnip, Mustard, and Collards. February 21, 1995.

List of subjects

Environmental protection, Administrative practice and procedure, Pesticides and pest, Reporting and recording requirements.

Dated: July 31, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–20458 Filed 8–13–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 95–176, FCC 96–318]

Closed Captioning and Video Description of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice; Report to Congress.

SUMMARY: Section 305 of the Telecommunications Act of 1996 adds a new section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended. Section 713 directs the Commission to conduct inquiries and report to Congress on the accessibility of video programming to persons with hearing and visual disabilities. On July 29, 1996, the Commission submitted its *Report* to Congress. As required by Section 713, the *Report* provides information on the availability of closed captioning for persons with hearing impairments and assesses the appropriate methods for phasing video description into the marketplace to benefit persons with visual disabilities. The *Report* is based on information submitted by commenters in response to a *Notice of Inquiry* in this docket and publicly available information. The *Report* is intended to provide Congress with the Commission's findings regarding closed captioning and video description of video programming as mandated by Section 713.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or John Adams, Cable Services Bureau (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report* in MM Docket No. 95–176, FCC 96–318, adopted July 25, 1996, and released on July 29, 1996. The full text of the *Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of the Order

1. Section 305 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996), adds a new section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended. Section 713(a) requires the Commission to report to Congress by August 6, 1996, on the results of an inquiry conducted to ascertain the level at which video programming is closed captioned. Specifically, Section 713(a) directs the Commission to examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved and any other related factors.

2. The Commission also is required to establish regulations and implementation schedules to ensure that video programming is fully accessible through closed captioning within 18 months of the enactment of the section on February 8, 1996. The Commission will initiate a rulemaking proceeding to implement this provision within the next several months with the issuance of a notice of proposed rulemaking in order to prescribe regulations by August 8, 1997.

3. Section 713(f) requires the Commission to commence an inquiry within six months after the date of enactment to examine the use of video descriptions on video programming to ensure the accessibility of video programming to persons with visual impairments. It requires the Commission to report to Congress on its findings, including an assessment of the appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

4. The *Report* is based on comments filed in response to a *Notice of Inquiry* in this docket, summarized at 60 FR 65052 (December 18, 1995), that sought comment on a wide range of issues relating to closed captioning and video description of video programming and publicly available information.

5. Key findings of the *Report* include:

Closed Captioning

- The primary beneficiaries of closed captioning are the approximately 22.4 million persons who are hearing disabled.
- Between 50 and 60 million U.S. homes have access to closed captioning. As a result of the Television Decoder Circuitry Act of 1990 and the Commission's implementing rules, all television receivers with screen sizes 13 inches or larger must be capable of receiving and displaying closed captions.
- Through the efforts of Congress, government agencies and a variety of private parties, captioned video programming has grown over the past 25 years and is now a common feature of many video programming types. Most nationally broadcast prime time television programming and nationally broadcast children's programming news, daytime programming and some sports programming, both commercial and noncommercial, is now captioned. New feature films produced in the U.S. that will be distributed by broadcast networks, cable networks, syndicators and local stations following their theatrical release are now captioned at the production stage. Local broadcast stations also frequently caption the portions of their local newscasts that are scripted in advance. Many of the national satellite cable programming networks distribute programming containing closed captions.
- Certain types of programming, however, are unlikely to be captioned, including non-English language programming, home shopping programming, weather programming that includes a large amount of visual and graphic information, live sports, and music programming. Captions are less likely to be included in programming intended to serve smaller or specialized audience markets.
- There is a wide range in the costs of closed captioning that reflects the method of adding the captions, the quality of the captions and the entity providing the captions. For pre-recorded programming, estimates of the cost of captioning range from $800 to $2500 per hour of programming. Estimates for the costs of captioning live programming range from $150 to $1200 per hour. The Department of Education provided about $7.9 million for closed captioning last year, which represents roughly 40% of the total amount spent on captioning.

Video Description

• Video description is an emerging service with only limited availability today. In contrast with the widespread availability of closed captioning, video descriptions are transmitted with only a small number of programs. As a consequence, the present record on which to assess video description is limited and the emerging nature of the service renders definitive conclusions difficult. The general accessibility of video description is dependent on the resolution of certain technical, legal and cost issues.

• There are approximately 8.6 million individuals who are blind or visually disabled, according to the National Center for Health Statistics, who might benefit from video description.

• Not all broadcast stations or other video distributors are able to transmit the secondary audio programming or ''SAP'' channel needed to provide video description and only about half of the nation's homes have a television with the capability to receive the SAP channel. Currently, video description is only available on some Public Broadcasting Service (''PBS'') programming and a limited number of cable satellite programming networks.

• Video description requires the development of a second script containing the narration of actions taking place in the video programming that are not reflected in the existing dialogue. The cost of video description are approximately one and a half times the costs associated with closed captioning similar programming.

• Obstacles to the development of video description have been the limited availability of SAP channels, the use of SAP channels for other audio tracks, including non-English language programming, limited funding by government and other sources and unresolved copyright issues related to the creation of a second script.

• The Commission will continue to monitor the deployment of video description and the development of standards for new video technologies that will afford greater accessibility of video description. Specifically, the Commission will seek additional information that will permit a better assessment of video description in conjunction with its 1997 report to Congress assessing competition in the video market place that is required by Section 628(g) of the Communications Act.

Ordering Clauses

6. This *Report* is issued pursuant to authority contained in Sections 4(i), 4(j), 403 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 403 and 613.

7. It is *ordered* that the Secretary shall send copies of this Report to the appropriate committees and subcommittees of the United States House of Representatives and United States Senate.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–20640 Filed 8–13–96; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1128–DR]

Michigan; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Michigan (FEMA–1128–DR), dated July 23, 1996, and related determinations.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Michigan, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 23, 1996:

Midland County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–20721 Filed 8–13–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1127–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1127–DR), dated July 18, 1996, and related determinations.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1996:

Bladen and Greene Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

Chowan County for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–20722 Filed 8–13–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1122–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1122–DR), dated June 24, 1996, and related determinations.

EFFECTIVE DATE: August 2, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 24, 1996:

Hocking and Vinton Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–20741 Filed 8–13–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

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.

Ian International, Inc., 7466 New Ridge Road, Hanover, MD 21076, Officer: Glenn L. Lobas, President

South East Forwarding, Inc., d/b/a/ SEFF, Inc., 3252 Village Green Drive, Miami, FL 33175, Officers: Lorraine S. Lowd, President/Secretary, George L. Lowd, Jr., Vice President/Treasurer

Dated: August 8, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–20682 Filed 8–13–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. 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 each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Whitney Holding Corporation, New Orleans, Louisiana; to merge with Liberty Holding Company, Pensacola, Florida, and thereby indirectly acquire Liberty Bank, Pensacola, Florida.

2. Whitney Holding Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of Whitney National Bank of Florida, Pensacola, Florida, a *de novo* national bank.

B. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Classic Bancshares, Inc., Ashland, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First Paintsville Bancshares, Inc., Paintsville, Kentucky, and thereby indirectly acquire First National Bank of Paintsville, Paintsville, Kentucky.

In connection with this application, Classic Bancshares, Inc., also has applied to retain 100 percent of the voting shares of Ashland Federal Savings Bank, Ashland, Kentucky, and thereby engage in permissible savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire 50 percent of the voting shares of The Oklahoma National Bank of Duncan, Duncan, Oklahoma.

2. Chester Bancorp, Inc., Chester, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Chester National Bank, Chester, Illinois, a proposed *de novo* bank and successor to the conversion of Chester Savings Bank, FSB, Chester, Illinois, and Chester National Bank of Missouri, Perryville, Missouri, a proposed *de novo* bank that will purchase the assets and assume the liabilities of Chester Savings Bank, FSB, Perryville, Missouri.

3. First Commercial Corporation, Little Rock, Arkansas; to acquire 50 percent of the voting shares of The Oklahoma National Bank of Duncan, Duncan, Oklahoma.

4. TRH Oklahoma, Inc., Norman, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The Oklahoma National Bank of Duncan, Duncan, Oklahoma.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rotan Bancshares, Inc., Rotan, Texas; and Rotan Delaware Bancshares, Inc., Dover, Delaware, to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank, Rotan, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 8, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–20677 Filed 8-13-96; 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 companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company 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.

Each 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 applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BancSecurity Corporation, Marshalltown, Iowa; to acquire Marshalltown Financial Corporation, Marshalltown, Iowa, and thereby indirectly acquire Marshalltown Savings Bank, FSB, Marshalltown, Iowa, and engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Capitol Bankshares, Inc., Madison, Wisconsin; to engage *de novo* through its subsidiary Capitol Mortgage Corporation, Madison, Wisconsin, in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. St. Clair Agency, Inc., St. Clair, Minnesota; to retain Clarice Germo Agency, St. Clair, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–20678 Filed 8-13-96; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Record of Decision; Federal Building—United States Courthouse, Phoenix, Arizona

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, to construct a new Federal Building—United States Courthouse (FB–CT) in Phoenix, Arizona.

The new FB–CT would consist of approximately 515,000 gross square feet (GSF) of building space and 380 parking spaces (totaling 40,800 GSF). The project, designed to relieve overcrowded conditions at the existing court facilities in Phoenix, is to be sited within the Central Business Area (CBA) of the City of Phoenix, Arizona and is anticipated to be ready for occupancy in the year 2000. The federal agencies proposed to utilize the new FB–CT are currently housed within the existing Phoenix FB–CT, located at 230 1st Avenue, and in leased commercial space in the Phoenix area. An objective of this project is to consolidate these federal agencies into a single structure within the City's CBA. The consolidation would promote efficiency in operations for agencies housed within several downtown locations.

Alternatives Considered

The GSA has considered a range of alternatives that could feasibly attain the objectives of the proposed project. NEPA does not require that an agency consider every possibility, but requires that the range of alternatives be comprehensive, so that the agency can make a ''reasoned choice'' among them. Alternatives considered are as follows:

Alternative 1 (''The Proposed Action'')

The proposed project site to be donated to the federal government by the City of Phoenix encompasses two city blocks and has an area of approximately 4.5 acres. The project site is bound by Washington Street (north), 4th Avenue (east), Jefferson Street (south), and 6th Avenue (west). Only a portion of this site would be utilized for the Proposed Action, with the remaining portion being used for surface parking in anticipation of future expansion to meet the United States District Court's proposed long-range space requirements. Under this alternative, both 5th and 6th Avenues between Washington and Jefferson Streets would be closed to vehicular traffic and much of the abandoned roadway area included into the GSA-proposed development area.

Alternative 2 (''The 5th Avenue Alternative'')

The proposed site under this alternative would be the same as for the Proposed Action. The site is bound by Washington Street (north), 4th Avenue (east), Jefferson Street (south), and 6th Avenue (west). The difference between this alternative and Proposed Action is the closure of project area roadways. Under this alternative, 5th Avenue would be closed and utilized as part of the project site, while 6th Avenue would remain open to through traffic.

Alternative 3 (''The Alternative Site'')

This alternative proposes developing 4.5 acres of a 8.5 acre site bounded by West Woodland Avenue (north), 7th Avenue (east), West Adams Street (south) and 9th Avenue (east). Portions of this property are owned by the Monroe School Association, Phoenix Automatic Machine Products, and by several private individuals. Site improvements currently include an abandoned 3-story building (Grace Court School), two abandoned single-story auxiliary school buildings, four single-family residences, an abandoned commercial building, and an auto parts store. This site is listed on the National Register of Historic Places (NHRP) as part of the Woodland Historic District. The three onsite school buildings and four residences are considered contributors to the district, while the commercial structures are considered noncontributors.

No Action Alternative

NEPA Section 1502.14(d) requires an alternative of No Action be included in the Environmental Impact Statement (EIS) analysis. The ''No Action'' Alternative would preclude development of the Phoenix FB–CT on any of the proposed project sites, therefore, property used for the project would be retained by the current owners. Under this alternative, U.S. Court and executive agencies and Congressional offices would continue to be housed in the existing Phoenix FB–CT at 230 North 1st Avenue and at various leased locations in Phoenix. The

projected increase in federal presence in the Phoenix area is not contingent on the construction of the proposed project, therefore, the rate of growth in federal employment levels in both the judicial and executive branches is projected to occur regardless of whether the proposed building is constructed.

Alternatives Examined But Not Considered in the EIS

In addition to the alternatives described above, several options were considered to fulfill the needs of the U.S. District Courts. These included the examination of several alternative sites beyond those considered within the EIS, the acquisition of Base Realignment and Closure Act properties, Resolution Trust Corporation (RTC) properties, the potential leasing of building space, and the expansion of the existing FB–CT. These alternatives were eliminated from further consideration due to a number of reasons, including but not limited to: fiscal cost, remote location, nonconforming lot configuration, and/or deficiencies in security and court operations.

Impacts/Mitigation Measures

The proposed construction of the FB–CT at the site of the Proposed Action would result in several significant environmental impacts. These significant adverse impacts will be reduced through incorporation of the following proposed mitigation measures.

Geology and Landforms. Project construction at the site of the Proposed Action would have the potential to cause short-term soil instability erosion. Potential long-term geologic impacts include the potential for subsidence and soil expansion.

Mitigation Measures: These impacts would be mitigated through implementation of a stormwater pollution prevention plan, as well as compliance with the requirements of the City of Phoenix Grading and Drainage Ordinance and a site-specific geotechnical investigation to be conducted prior to construction.

Surface Hydrology. Offside movement of disturbed soils during construction at the site may result in short-term deposition in area storms drains. No long-term impacts to area drainage are anticipated.

Mitigation Measures: Construction-related impacts would be mitigated by development of a stormwater pollution prevention plan.

Vegetation and Wildlife. The Mexican free-tailed bat, a Department of Forestry special status species, has been documented in the vicinity of the Proposed Action. However, project implementation is not anticipated to significantly affect this species. No other rare, threatened, or endangered species occur in the area.

Mitigation Measures: None required.

Air Quality. Short-term emissions associated with construction activities would not exceed Clean Air Act thresholds and would be less than significant. Long-term emissions of volatile organic compounds (VOC) and carbon monoxide (CO) associated with vehicle trips and onsite energy consumption would not exceed the 100 tons per year significance thresholds and are, therefore, considered less than significant. Project vehicle trips would, however, result in exceedances of the 8-hour Federal CO standard at several project analyzed intersections. Exceedances are predicted to occur immediately adjacent to congested intersections, even if the project is not implemented. These exceedances appear inconsistent with the Maricopa Association of Governments (MAG) Carbon Monoxide Plan (MAG 1993, 1994), which predicts regional attainment of the standard by 1995. However, the focus of project-level analysis is purposely different from regional attainment analysis. Project-level analysis is designed to detect local impacts associated with increasing traffic volumes, changing traffic distribution pattern and reducing distances of receptors to congested intersections. The focus of regional attainment analysis is to identify areas in violation of the standard, determine the effect of control strategies and to determine population exposure. However, both analyses utilize the intersection model CAL3QHC.

A guidance document developed by the U.S. Environmental Protection Agency titled ''Guideline for Modeling Carbon Monoxide from Roadway Intersections'' (1992) provides distinctly different guidance for the two types of analysis. The primary differences in this guidance are the use of receptors immediately adjacent to congested intersections and worst-case meteorological default values for project-level analysis. Regional attainment analysis is required to use existing air quality monitoring stations as receptors since attainment is based upon concentrations measured at these stations. Regional attainment analysis is also required to use actual meteorological data and background CO concentrations obtained from regional modeling (i.e.: Urban Airshed Model). Regional modeling is complex, involving dividing the non-attainment area into grid squares and estimating emissions, meteorology and resulting CO concentrations in each grid square. Since regional modeling is not conducted for project-level analysis, this data is not available as input to the intersection modeling.

Because regional attainment analysis uses actual meteorology and background CO concentrations for the grid square in which the intersection is located, regional attainment analysis is expected to more realistically represent future conditions. Project-level analysis is expected to produce higher CO concentrations because receptors are much closer to the intersection, and worst-case meteorology and background CO concentrations are used in the analysis. Worst-case meteorology includes using a wind direction that blows emissions directly by at each receptor.

Modeling conducted for the proposed project should be considered as a screening method to identify problem intersections and not refuting the attainment demonstration of MAG's CO Plan. Over-prediction of exceedances provides a margin of safety such that all potential impacts are identified and mitigated.

Mitigation Measures: Although short-term air quality impacts are considered less than significant, the following mitigation measures will be implemented by GSA to further reduce impacts.

- A construction traffic management plan will be developed to:

—Restrict construction activities that significantly affect traffic flow to off-peak hours (7 p.m. to 6 a.m. and 10 a.m. to 3 p.m.).

—Route construction trips to avoid congested streets.

—Provide dedicated turn lanes for movement of construction equipment onsite and offsite.

- Electrical power for construction activities will be obtained from power poles instead of electrical generators (when feasible).
- Methanol of natural gas will be used for mobile construction equipment instead of diesel (when feasible).
- Active portions of the project site will be watered as needed to prevent excessive fugitive dust.
- Non-toxic soil stabilizers will be applied to graded areas inactive for 10 days or more.
- Excavation and grading will be suspended when the wind speed (as instantaneous gusts) exceeds 25 miles per hour.
- Trucks transporting earth material offsite will be covered or maintain at least 2 feet of freeboard.–

• Paved streets adjacent to the construction site will be swept as needed to remove dust and silt that may have accumulated as a result of construction activities.

• All construction requiring heavy equipment will be curtailed during ozone alerts (e.g. hourly ozone concentrations which exceed 0.20 ppm).

GSA will insure that the following measures are implemented to reduce long-term air quality impacts associated with the FB–CT project:

• GSA will develop a transportation management plan which will include:

—Providing carpool matching services and preferential parking spaces for carpool vehicles.

—Offering alternative work hours and alternative work weeks (i.e. 9 days/80 hours, 4 days/40 hours, etc.).

—Providing teleconferencing facilities.

Noise. Project implementation at the site of the Proposed Action could result in short-term noise and vibration impacts from construction activities. Long-term impacts associated with the Proposed Action would be less than significant and would be further reduced through implementation of appropriate design guidelines.

Mitigation Measures: Although the following mitigation measures would reduce short-term noise impacts, it is anticipated that noise levels would remain above significance threshold levels, and therefore, significant and unavoidable. To reduce impacts from nonpile driver construction noise, the GSA will implement the following:

• Schedule operations to coincide with periods when people would least likely be affected;

• Muffle and shield construction equipment intakes and exhausts;

• Shroud or shield impact tools such as jackhammers and use electric-powered rather than diesel-powered construction equipment as feasible;

• Utilize portable noise barriers within the area of equipment areas and around stationary noise source such as compressors; and

• Locate stationary equipment in pit areas or excavated areas as such siting would create noise barriers.

Natural or Depletable Resources. Project implementation would not substantially impact available energy supplies or affect access to any natural resources. Therefore, impacts to natural and depletable resources would be less than significant.

Mitigation Measures: None required.

Public Health and Safety. The testing portion of a Phase II Environmental Site Assessment has recently been completed and has determined that contamination of both onsite soils and groundwater exist at the site of the Proposed Action. Because of these findings, some level of environmental remediation will be required; however, implementation of these recommendations mitigate any impacts. Long-term operation of the new FB–CT is not expected to contribute to any ground water contamination problems in the area.–

Mitigation Measures: GSA will adhere to and implement the recommendations of the Phase II Environmental Site Assessment.

Land Use, Socioeconomics and Visual Resources. The height of the proposed federal courthouse may be greater than that allowed by City of Phoenix land use policy. Such impacts would be reduced through compliance with City of Phoenix design policies and incorporation of site amenities. Project implementation would have the beneficial effects of generating short-term construction jobs and retaining federal employment opportunities in the downtown area. No significant adverse impacts to the local housing or real estate markets are anticipated with implementation of the Proposed Action.

Mitigation Measures: None required.

Cultural Resources. The Proposed Action would not result in any impacts to standing historic structures, as no such resources would be destroyed, damaged, altered, or impacted in any way. Two prehistoric Hohokam sites, Pueblo Patricia and La Villa, have been recorded near the site of the Proposed Action. The Pueblo Patricia site is approximately four blocks from the proposed site, while the La Villa Site is less than two blocks from the site. In addition, the proposed project site was part of the Original Townsite of Phoenix. Consequently, there is a high probability that prehistoric and historic cultural resources are present onsite, including the possibility of human remains. GSA will consult with the Arizona State Historic Preservation Office, City of Phoenix, and Advisory Council on Historic Preservation to develop a Memorandum of Agreement which will outline procedures to be adhered to as GSA pursues a data recovery program to mitigate potential impacts.

Mitigation Measures: GSA will work with the Arizona State Historic Preservation Office, City of Phoenix, Advisory Council on Historic Preservation, and affected Native American organizations to insure that any prehistoric and/or historic cultural resources identified onsite are recovered and stored in accordance with the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act.

Public Utilities

Gas and Electric. Short-term service interruption impacts associated with extension of electric and natural gas systems could occur, but are considered insignificant due to their temporary nature. The local electricity and natural gas distribution networks can serve the proposed FB–CT. Project design would be in accordance with applicable energy conservation codes. Thus, electricity and natural gas service impacts are considered less than significant.

Mitigation Measures: None required.

Solid Waste. Short- and long-term impacts to solid waste collection and disposal service would be less than significant and would be further reduced through implementation of the recommended waste reduction measures.

Mitigation Measures: None required.

Water and Sewer. Short-term interruptions to water or sewer service, if any, are anticipated to be less than significant. Water demand and wastewater flow created by project operation would not significantly affect local water supply or water/wastewater systems. Water and wastewater impacts are, therefore, considered less than significant.

Mitigation Measures: None required.

Microwave Communication

Microwave communication services could be affected within the downtown area due to the construction of the Proposed Action. Both the County of Maricopa and KSAZ–TV have expressed concern regarding the proposed project's impact to the integrity of their microwave signals. Impacts would, however, be reduced to a less than significant level through relocation of the microwave path. GSA has been informed by KSAZ–TV that they intend to construct a new 150-foot tall tower so that its microwave signal will not be compromised by the construction of mid-rise buildings in the Governmental Mall area.

Mitigation Measures: None required.

Public Services. Project implementation would not be expected to generate a significant increase in police service calls or affect Phoenix Police Department response times. Although building height might complicate fire protection services, the Phoenix Fire Department is equipped to serve high rise structures. Project implementation would not substantially affect emergency response times and building design is expected to comply with applicable building and fire codes.

Public service impacts are, therefore, considered less than significant.

Mitigation Measures: None required.

Transportation and Parking. In the EIS, traffic growth was estimated using a two percent annual growth rate. This growth rate was applied to the existing traffic counts to estimate future background traffic conditions. In addition, eight projects in the Downtown area were identified by City of Phoenix staff and included in the evaluation of cumulative traffic growth. These projects include: Arizona Museum of Science and Technology, Phoenix Museum of History, Heritage and Science Parking Garage, Downtown Phoenix Transit Center, Maricopa County Office Complex, City of Phoenix Office Development, the Baseball Stadium, and the Parking Facility located between 6th and 7th Avenues and between Washington and Jefferson Streets.

The sum of existing traffic volumes, growth in existing traffic volumes due to general background development occurring in the area by the year 2000 (for one scenario) and year 2010 (for a second scenario), and incremental traffic increases related to the eight specific development projects identified in the study area represents projected year 2000 and year 2010 traffic conditions without the proposed courthouse project. The year 2000 and year 2010 analyses presented in the EIS assumes recommended mitigation measures are incorporated. No assumptions have been made regarding responsibility for implementation of the recommended mitigation measures. The LOS levels contained in the EIS represent operating conditions in year 2000 and year 2010 with necessary improvements in place.

Because project implementation would affect the closure of both 5th and 6th Avenues between Washington and Jefferson Streets, the project would generate a substantial increase in afternoon peak hour traffic at the intersections of 3rd/Jefferson and 3rd/Washington, resulting in an unacceptable level of service for the 3rd/Jefferson intersection and therefore an unavoidable significant impact.

Existing signal cycle lengths are fixed at 60 seconds for the inter-connected signal system along Jefferson and Washington. The setting of signal cycle lengths are influenced by a number of factors. The magnitude and distribution of peak period traffic flows at the individual intersection approaches and the signal phases required to accommodate the various traffic movements contribute to the determination of the optimum cycle length which results in the lowest average delay for vehicles being served by the intersection. In the case of the individual intersection of Jefferson Street and Third Avenue, GSA believes that the optimum signal cycle length in the future analysis years would be within the range of 95 to 100 seconds.

The result of not being able to use the signal cycle time in an efficient manner at the Jefferson/Third Avenue intersection is an afternoon peak hour Level of Service ''F'' for both the 2000 and 2010 forecast years with the Proposed Action project scenario. Future service levels for the Washington/Third Avenue intersection were found to be ''C'' or better. The analysis assumes that GSA will provide a double left turn at the eastbound Jefferson Street approach to Third Avenue and at the northbound Third Avenue approach to Washington Street. Mitigation opportunities provided within the EIS would not be not sufficient to improve the future traffic service level to ''D'' or better with the Proposed Action scenario (the City of Phoenix considers LOS D the limit of tolerable traffic congestion during peak traffic periods).

Mitigation Measures: Short-term impacts in the project area (during construction) would be reduced through implementation of the following mitigation measures:

- Heavy construction equipment such as bulldozers and large loaders would be moved onsite prior to construction and realignment activities and remain until the equipment is no longer needed;
- Some minor disruption of traffic flows would occur at this time; however, the short duration of activity would minimize impacts;
- Movement of construction vehicles and equipment onto and off of the site would be scheduled in a manner that would avoid the peak traffic periods on the adjacent street network;
- Construction employees traveling to and from the site on a daily basis will be scheduled to occur prior to the morning and evening traffic peak.

Long-term impacts would be reduced through implementation of the following mitigation measures:

- GSA will develop a transportation management plan which would reduce impacts to the local circulation system by reducing the number of new motor vehicle trips generated by the project.
- GSA will work with the City to provide a double left turn at the eastbound Jefferson Street approach to Third Avenue and at the northbound Third Avenue approach to Washington Street.

As stated previously, however, the above mitigation measures will not be sufficient to improve the 3rd/Jefferson intersection to an acceptable Level of Service.

Significant Unavoidable Impacts

The following impacts associated with the Proposed Action are considered significant and unavoidable:

- Development of the project would result in an increase in long-term pollutant emissions within the project area, thus exacerbating the existing inability of the air basin to attain the national standards for ozone, carbon monoxide, and PM–10.
- Construction activities would result in short-term noise increases in excess of acceptable levels.
- The project will result in an afternoon peak hour Level of Service F at the Jefferson/Third Avenue intersection.

The General Services Administration believes that there are no additional outstanding issues to be resolved with respect to the proposed project. Additional information regarding the new Federal Building—United States Courthouse—may be directed to Mr. Alan Campbell, Portfolio Management Division (9PT), U.S. General Services Administration, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 522–3491.

Dated: August 6, 1996.

Kenn N. Kojima,

Regional Administrator (9A).

[FR Doc. 96–20667 Filed 8–13–96; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–107]

Policy on Government-to-Government Relations With Native American Tribal Governments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the final ATSDR policy on conducting government-to-government relationships with federally recognized tribal governments. The draft policy was published for public comment in the Federal Register on August 1, 1995 [60 FR 39176]. The public comment period

ended August 31, 1995. Comments were received from 5 individuals representing tribal governments and intertribal councils. This document reflects finalization of the ATSDR policy after consideration of those comments.

FOR FURTHER INFORMATION CONTACT: Dr. Mark M. Bashor, Associate Administrator for Federal Programs, Office of Federal Programs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–28, Atlanta, Georgia 30333, telephone (404) 639–0730.

SUPPLEMENTARY INFORMATION: The Agency for Toxic Substances and Disease Registry issues the following policy statement related to its Government-to-Government Relations with Native American Tribal Governments:

The mission of ATSDR is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. In carrying out its programs, ATSDR works with other Federal, State, and local government agencies, and tribal organizations to protect public health.

The U.S. Government has a unique government-to-government relationship with tribal governments as established by the U.S. Constitution, by treaties, by statute, by court decisions, and by Executive Orders. This relationship respects the U.S. Government's trust responsibility to American Indians and Alaskan Natives and their rights of self-government because of their sovereign status. ATSDR is strongly committed to building a more effective day-to-day working relationship with tribal governments.

In fulfilling the commitment to establish and maintain government-to-government relations with federally recognized tribal governments, ATSDR will be guided by:

(1) Section 126 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the principles set forth in the President's ''Memorandum for the Heads of Executive Departments and Agencies Regarding: Government-to-Government Relations with Native American Tribal Governments'' (April 29, 1994). In particular, ATSDR will:

- In a manner consistent with the protection of public health, consult with tribal governments to ensure that tribal rights and concerns are considered before ATSDR takes actions, makes decisions, or implements programs that may affect tribes; and
- Establish procedures to work directly and effectively with tribal governments.

(2) The needs and culture of individual tribal governments;

(3) ATSDR's prior and ongoing experience with tribal governments, and recognized organizations associated with such governments; and

(4) The need to enhance coordination with other agencies with related areas of responsibility.

Dated: August 8, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 96–20702 Filed 8–13–96; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[INFO–96–22]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody or HIV Antigen (0920–0329). In 1987, the President directed the Department of Health and Human Services (DHHS) to determine the nationwide incidence of, to predict the future of, and to determine the extent to which human immunodeficiency virus (HIV) is present in various segments of our population. In response, CDC formed an epidemiologic team to summarize existing information. An extensive review of published and unpublished data led to the conclusion that even though there is information suggesting a very large number of Americans were infected, there was no substitute for carefully and scientifically obtained incidence and prevalence data. The need to monitor HIV seroprevalence existed on the national and at the state and local levels for public health management: targeting and evaluating prevention programs, planning future health care needs and determining health policy.

On a national basis, HIV seroprevalence projects in 1987 consisted of monitoring the HIV status of: Civilian applicants for military service; blood donors, including follow-up risk factor evaluation in seropositives; and Job Corps entrants. HIV prevalence was studied in settings of special public health interest including selected colleges and prisons, among health care workers in hospital emergency rooms and among Native Americans and homeless persons. Other national data sources were examined, such as cohort studies of groups at risk, including homosexual and bisexual men and IV drug users, providing information on knowledge of AIDS and risk behaviors, changes in behavior, and incidence of HIV infection.

In 1987, OMB approved the ''Family of HIV Seroprevalence Surveys'' (0920–0232). These surveys included seven seroprevalence surveys which involved interaction with individuals (non-blinded surveys). One of these surveys was the surveillance and evaluation of blood donors positive for Human Immunodeficiency Virus (HIV) Antibody.

In 1993, OMB again approved for 3 years the surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners (0920–0329). This request is for an additional 3-year approval. The total cost to respondents is estimated at $3,784.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Blood donors (interviews)	160	1	1.0	160
Blood donors (refuse interview)	120	1	0.1	12
Total	.....	.....	.....	172

Dated: August 8, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–20703 Filed 8–13–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Jurisdiction of Sea Lice Treatment and Control; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine is announcing a Joint Canadian-United States Workshop on Jurisdiction of Sea Lice Treatment and Control. The purpose of the workshop is to provide a forum for discussion of the impact of various government entities within Canada and the United States on present and proposed treatment and control methods of sea lice. Also, scientific aspects of sea lice drug treatment and control will be discussed. The general sea lice topic is of international concern because of the location of salmon net-pen culture facilities on the border between the United States and Canada.

DATES: The public workshop will be held on Monday, September 9, 1996, from 8 a.m. to 6:30 p.m.

ADDRESSES: The public workshop will be held at the Doubletree Hotel, 300 Army Navy Dr., Crystal City, VA.

FOR FURTHER INFORMATION CONTACT: Carol J. Haley, Center for Veterinary Medicine (HFV–152), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1682.

Those persons interested in attending the workshop should call the information contact person listed above. There is no registration fee for this workshop, but advance registration is required due to space limitations.

SUPPLEMENTARY INFORMATION: The agenda for the workshop will include discussions of scientific aspects of sea lice infestation in salmon net-pens and of the impacts of regulation by multiple government entities on treatment and control of the disease.

Dated: August 7, 1996.

William K. Hubbard.

Associate Commissioner for Policy Coordination.

[FR Doc. 96–20752 Filed 8–13–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Proposals Submitted for Collection of Public Comment: Submission for OMB Review

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. HCFA–R–107—*Type of Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid—Determining Liability of Third Parties and supporting regulation 42 CFR 433.138; *Form No.:* HCFA–R–0107; *Use:* The information collected from Medicaid applicants and recipients as well as from State and local agencies is necessary to determine the legal liability of third parties to pay for medical services in lieu of Medicaid payment. Regulation 42 CFR 4333.138 requires the increase of third party resources to improve program efficiencies and reduce Medicaid expenditures; *Frequency:* On occasion; *Affected Public:* Federal Government and State, local, or tribal government; *Number of Respondents:* Varies; *Total Annual Responses:* Varies; *Total Annual Hours:* 171,165.

2. HCFA–R–188—*Type of Information Collection Request:* New collection; *Title of Information Collection:* Federally Qualified Health Center (FQHC) Survey; *Form No.:* HCFA–R–188; *Use:* This survey is needed and will be used by HCFA to evaluate the FQHC Medicare benefit. Respondents will be all Medicare certified FQHC's. *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, and business or other for-profit; *Number of Respondents:* 1,489; *Total Annual Responses:* 1,489; *Total Annual Hours Requested:* 496.

3. HCFA–R–193—*Type of Information Collection Request:* Existing collection in use without an OMB control number; *Title of Information Collection:* An Important Message from Medicare; *Form No.:* HCFA–R–193; *Use:* Hospitals participating in the Medicare program have agreed to distribute ''An Important Message from Medicare'' to beneficiaries during each admission. Receiving this information will provide the beneficiary with some ability to participate and/or initiate discussions concerning decisions affecting Medicare coverage or payment and about his or her appeal rights in response to any hospital's notice to the effect that Medicare will no longer cover continued care in the hospital. *Recordkeeping:* As needed; *Affected Public:* Individuals or Households, Business or other for-profit; Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 6,700; *Total Annual Responses:* 11,000,000; *Total Annual Hours Requested:* 183,333.

4. HCFA–R–194—*Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicare Disproportionate Share

Adjustment Procedure and Criteria; *Form No.:* HCFA–R–194; *Use:* Regulation sets up an alternative process for hospitals that choose to have their disproportionate share adjustment statistics calculated based on their cost reporting periods rather than the Federal fiscal year. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours Requested:* 100.

5. HCFA–319—*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sample Selection Lists; *Form No.:* HCFA–319; *Use:* The State MEQC sampling list is necessary for regional offices to control and track State MEQC reviews. The sample selection lists contain identifying information on Medicaid beneficiaries. *Frequency:* Monthly; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 55; *Total Annual Hours:* 5,280.

6. HCFA–856—*Type of Information Collection Request:* New Collection; *Title of Information Collection:* National Payer Identifier (PAYER-ID); *Form No.:* HCFA–856; *Use:* The PAYER-ID will allow payers of health care claims to be identified by a unique numeric identifier. PAYER-ID numbers will be assigned, but not limited to the following groups: Medicare, Medicaid, VA, Public Health Service, large employers and unions, HMOs, large insurers, etc.; *Frequency:* One time (reporting); *Affected Public:* Not for profit institutions, business or other for profit, Federal government, State, local or tribal government; *Number of Respondents:* 85,000; *Total Annual Responses:* 85,000. *Total Annual Hours:* 85,000.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–4193. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 6, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 96–20668 Filed 8–13–96; 8:45 am]

BILLING CODE 4120–03–P

Office of Inspector General

Program Exclusions: July 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AHUMADA, ABELARDO RAMIREZ, TUCSON, AZ	08/11/96
AMERICAN HEALTH PRODUCTS INC., HUNTINGDON VALLEY, PA	08/08/96
ASSOCIATED HEALTH SERVICES, MANASSAS, VA	08/08/96
BARNES, CARNELL M., HAWORTH, OK	08/13/96
BEALE STREET PHARMACY, HINGHAM, MA	08/13/96
BENEFICIAL HEALTH PRODUCTS INC., HUNTINGDON VALLEY, PA	08/08/96
BLANCHARD, LISA R., MILWAUKEE, WI	08/12/96
BOYD, JOE T., BIG SPRING, TX	08/13/96
BRAMBILA, KRISTINA ROWLAND, RODEO, CA	08/11/96
COCIVERA, JOHN, HUNTINGDON VALLEY, PA	08/08/96
CONDE, ANA, HIALEAH, FL	08/06/96
DAVIDSON, DENISE E., OILTON, OK	08/13/96
DAVIDSON, CHORDE W., OILTON, OK	08/13/96
DESALVO, WENDY M., PHOENIX, AZ	08/11/96
DRUMHELLER, WILLIAM, HANOVER, VA	08/12/96
ESAU, PAUL A., OKLAHOMA CITY, OK	08/13/96
GOINS, JUDITH, ERLANGER, KY	08/06/96
HOECKLE, CATHERINE PAULETTE, MINNEAPOLIS, MN	08/12/96
HOFFMAN, JAMES F. JR., FORT COLLINS, CO	08/13/96
HURLEY, CAROL, AUSTIN, TX	08/13/96
KAREFA-SMART, SUZANNE, CHEVY CHASE, MD	08/11/96
KARLAVAGE, JOHN J., WATSONTOWN, PA	08/08/96
KARSCH, PAUL, BOCA RATON, FL	08/08/96
KEENE, DONALD R., HINGHAM, MA	08/13/96
KENTUCKY CONVALESCENT SUPPLY, CINCINNATI, OH	08/06/96
KIM, SANG LY, BELLFLOWER, CA	08/11/96
KLUMP, HOWARD, CINCINNATI, OH	08/06/96
LEALOFI, MALEKO I., KENT, WA	08/11/96
LUTHER, ROBERT J., HOLLIDAYSBURG, PA	08/08/96
MAKRIDAKIS, NIKOLAOS N., FORT WAYNE, IN	08/12/96
MASSEY ANALYTICAL LABS, INC., BRIDGEPORT, CT	08/13/96
MAYORGA, SANDRA, MIAMI, FL	08/06/96
MCCLENDON, CARROLL LORENE, BLOOMBURG, TX	08/13/96
MCMAHON, NONA DYER, MANASSAS, VA	08/08/96
MID ATLANTIC HEALTH PRODUCTS, HUNTINGDON VALLEY, PA	08/08/96
MILLS, ROBERT JACKSON, ST SIMONS ISLAND, GA	08/06/96
MILLS, MARGIE B., ST SIMONS ISLAND, GA	08/06/96
MOHAMED, HASAPALL, EAST HARTFORD, CT	08/12/96
NORTH AMERICAN HEALTH INDUST, HUNTINGDON VALLEY, PA	08/08/96
PARKE, DOTTY, CANADAIGUA, NY	08/13/96
REGESTER, YVONNE, BOCA RATON, FL	08/08/96
RICHARDS, CAROL E., PORT ST LUCIE, FL	08/12/96
ROOKS, SCOTT, GREENFIELD, OH	08/12/96
SHAW, DOROTHY, BRYAN, TX	08/13/96
SILVERSON, DANIEL W., LEWISTON, ID	08/11/96
TAUBES, HARVEY, GREAT NECK, NY	08/13/96

Subject, city, state	Effective date
TE RONDE, CAROL J., JACKSON, WI	08/12/96
TOWNSEND, BERNARD S., SACRAMENTO, CA	08/11/96
U.S. HEALTH PRODUCTS INC., HUNTINGDON VALLEY, PA	08/08/96
UNIVERSAL MEDICAL COMPANY INC., HUNTINGDON VALLEY, PA	08/08/96
VEGA, NORA, HIALEAH, FL	08/06/96
WEBER, JAMES K., PITTSBURGH, PA	08/08/96
PATIENT ABUSE/NEGLECT CONVICTIONS	
BATES, PINKIE L., BIRMINGHAM, AL	08/06/96
BRADDOCK, KAREN SUE, ISSAQUAH, WA	08/11/96
CROWE, RONNA, DURAND, MI	08/12/96
HORTON, DONALD L., COMMERCE CITY, CO	08/13/96
MAXWELL, VIRGINIA L., BIRMINGHAM, AL	08/06/96
PRIMUS, YVETTE, DECATUR, AL	08/06/96
ROGERS, BOBBIE, WEST BLOCTON, AL	08/06/96
SAMPSON, GERALDINE OLADOYE, NAPLES, TX	08/13/96
THOMAS, STANLEY K. JR., WARREN, MI	08/12/96
WARD, SABRINA F., MIDWEST CITY, OK	08/13/96
CONVICTION FOR HEALTH CARE FRAUD	
BELONOS, STELLA E., PROVIDENCE, RI	08/13/96
CARPENTER, DARRELL G., FAIRFIELD, ME	08/13/96
DELIA, FRANK A., BLUE BELL, PA	08/08/96
EDGLEY, B. WILLIAM, PORT TOWNSEND, WA	08/11/96
FARRELL, TAMMY L., WELLS, ME	08/13/96
GARFINKEL, BARRY, MINNEAPOLIS, MN	07/05/96
LEIGHTON, HUGH M. JR., AUBURN, ME	08/13/96
MCCRILLIS, LISA M., PORTLAND, ME	08/13/96
MOORE, BONNIE FAYE, TUCSON, AZ	08/11/96
OLIVER, IRENE H., FARMINGTON, ME	08/13/96
SANDERSON, YOLANDA D., WINDHAM, ME	08/13/96
SCHEINER, DAVE E., PHILADELPHIA, PA	08/08/96
WRIGHT, KAREN S., WATERVILLE, ME	08/13/96
CONTROLLED SUBSTANCE CONVICTIONS	
BELLUCCI, JOHN B., TREVOR, WI	08/12/96
WAKHAM, GARY A., GILBERT, WV	08/08/96
LICENSE REVOCATION/SUSPENSION/ SURRENDER	
AHRENS, SHERRY M., MARSHALLTOWN, IA	08/12/96
ANDERSON, CHERYLEE JAE, BURNSVILLE, MN	08/12/96
BAKONIS, WILLIAM L., AMSTERDAM, NY	08/13/96
BATES, WILBERT, DENVER, CO	08/13/96
BUSSE, VICKI L., ST LOUIS PARK, MN	08/12/96
CHANCE, DARLENE M., DES MOINES, IA	08/12/96
COCKS, JAMES ROBERT, CUSHING, ME	08/13/96
COOK, WILLIAM H., STRATFORD, CT	08/13/96
DAILEY, MICHAEL JOSEPH, DOUGLAS, AZ	08/11/96
DAY, KELLY R., BRIGHTON, CO	08/13/96
ELIAN, GILBERT J., SANTA CLARA, CA	08/11/96
ELSASSER, MARK H., BROOMFIELD, CO	08/13/96
FELICI, SUSAN, WARWICK, RI	08/13/96
FOSTER, JOSEPHINE A., LAKE CITY, MN	08/12/96
GEER, SHARON R., BLOOMINGTON, MN	08/12/96
GIBSON, ROBERT L., LEDYARD, CT	08/13/96
HALLIDAY, RONALD K. III, MINNEAPOLIS, MN	08/12/96
HANING, RAY V., PROVIDENCE, RI	08/13/96
HUYNH, TUAN, ST PAUL, MN	08/12/96
JUSTOFIN, MARK A., WEST HAZELTON, PA	08/08/96
KEITA, MAMADI, WASHINGTON, DC	08/08/96
LEPLEY, CHARLES R., MOUNT KISCO, NY	08/13/96
LINDELIEN, KRYSTINE A., ST PAUL, MN	08/12/96
LIPEZKER, AMELIA SUSAN, CHICAGO, IL	08/12/96
LIPOFF, DENNIS, NORTHBROOK, IL	08/12/96
LOMBARDO, STEPHEN J., STATEN ISLAND, NY	08/13/96
MACHECA, DEBRA LYNN, HUNTINGTON BCH, CA	08/11/96
MANGLA, JAGDISH CHAND, PITTSFORD, NY	08/13/96
MESSINA, SARA, CHESTER, CT	08/13/96
MILLER, DONALD B., EDINA, MN	08/12/96
MONROE, DANIEL, HARRISON, NY	08/13/96
NELSON, MARK V., CAREY, NC	08/06/96
NICHOPOULOS, GEORGE C., MEMPHIS, TN	08/06/96
NOLL, RICHARD J., WIND GAP, PA	08/08/96
NOVEROSKE, SUSAN, W ELIZABETH, PA	08/08/96
OPPLINGER, GARRET L., WESTMINSTER, CO	08/13/96
PETTIGREW, RUTH M., CRANSTON, RI	08/13/96
QUIMBY, SUSAN A., HOPKINS, MN	08/12/96
ROSE, SHARON D., EAGLE RIVER, AK	08/11/96
RYAN, KENNETH J., ALEXANDRIA, MN	08/12/96
SANTIAGO, PATRICIA A., CHICAGO, IL	08/12/96
SAPPINGTON, JOHN S., PROVIDENCE, RI	08/13/96
SCHAFER, KENT LEE, NEWPORT NEWS, VA	08/08/96
SHANGOLD, MARK, EASTON, CT	08/13/96
SIAHAAN, EDWARD HALOMOAN, RANCHO CUCAMONGA, CA	08/11/96
ST. HILL, GEORGE E., PATERSON, NJ	08/13/96
STOLOFF, HERBERT, BANTAM, CT	08/13/96
URELIUS, SCOTT N., WATERLOO, IA	08/12/96
VERA, ALFONSO, PUEBLA, MEXICO	08/13/96
WALDROP, NONA D., STORM LAKE, IA	08/12/96
WOODY, KATHLEEN J., ANKENY, IA	08/12/96
FEDERAL/STATE EXCLUSION/ SUSPENSION	
HEINE, THOMAS J., GREENDALE, WI	08/12/96
KAUFOLD, ARTHUR S., BROOKLYN, NY	08/13/96
MASKARON, MICHAEL P., BROOKLYN, NY	08/13/96
PAAR, CHERYL L., ONALASKA, WI	08/12/96
FRAUD/KICKBACKS	
MILLER, ANNE, BLUE BELL, PA	06/05/96
MILLER, ROBERT, BLUE BELL, PA	06/05/96
TALISMAN, HERBERT L., FORT LAUDERDALE, FL	05/24/96
WOLK, ROBERT P., PHILADELPHIA, PA	06/10/96
WOLK, HARRIET, PHILADELPHIA, PA	06/10/96
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
BOYD CHIROPRACTIC CLINIC, BIG SPRING, TX	08/13/96
CLAY CHIROPRACTIC, BIRMINGHAM, AL	08/06/96
DERENZO AND ASSOCIATES, BERWYN, PA	08/08/96
HILLCREST CLINICS, INC., BIG SPRING, TX	08/13/96
I.M.G. TESTING, INC., BIG SPRING, TX	08/13/96
LEONAS & ASSOCIATES, PALOS HEIGHTS, IL	08/12/96

Subject, city, state	Effective date
MED-AMERICA CLINICS, INC., BIG SPRING, TX	08/13/96
MED-AMERICA HEALTH CENTER, BIG SPRING, TX	08/13/96
MEDICINE SHOPPE, COLORADO SPRINGS, CO	08/13/96
MEDICINE SHOPPE, COLORADO SPRINGS, CO	08/13/96
MID AMERICA DIAGNOSTICS, INC., BIG SPRING, TX	08/13/96
SAFETY MEDIAL TRANSPORTATION, BRYAN, TX	08/13/96
SCHAEFFER CHIROPRACTIC, CORALVILLE, IA	08/12/96
DEFAULT ON HEAL LOAN	
ABENDAN, MARILOU S., ALBANY, CA	08/11/96
ADEDARA, ISAAC O., HYATTSVILLE, MD	08/08/96
ALSHOUSE-ELLIS, LUANNE S., TERRELL, TX	08/13/96
ANDERSON, ANGELA J., TORRANCE, CA	08/11/96
BARBALA, PATRICIA JEANNE, FRESNO, CA	08/11/96
BERG, TROY LYNN, HUNTINGTON BCH, CA	08/11/96
BRENT, GLORIA J., DETROIT, MI	08/12/96
BRINKER, RICHARD B., PORT HUENEME, CA	08/11/96
BROWN, DAVID A., ATHOL, MA	08/13/96
BURNETT, KEVIN M., SOUTH BEND, IN	08/12/96
CALHOUN, GEORGE W., AUSTIN, TX	08/13/96
CANNON, FRED C., COLUMBUS, MO	07/01/96
CATALFO, TIMOTHY L., ALPHARETTA, GA	08/06/96
COX, STEWART J., PLEASANT HILL, CA	08/11/96
CZEGLEDY, FERENC D., PLANDOME, NY	08/13/96
DHALIWAL, EMALINE K., MORENO VALLEY, CA	08/11/96
DHARMA-HAYNES, GEETHA ALICE, LOS ANGELES, CA	08/11/96
DOBSON, JUSTINE E., FLORENCE, OR	08/11/96
DONE, BYRON H., WALNUT CREEK, CA	08/11/96
DOSUNMU, BENZENA V., BROOKLYN, NY	08/13/96
ELI, DESIREE D., CAPITOLA, CA	08/11/96
GARZA, RUDOLPH P., SAN JOSE, CA	08/11/96
GRAY, SCOTT D., HEMET, CA	08/11/96
HOLMAN, STANLEY F., LOUISVILLE, KY	08/06/96
HOPFNER-KOZEL, NOREEN V., POWDER SPRINGS, GA	08/06/96
HORGASH, JOHN S., HORSHAM, PA	08/08/96
JONES, THOMAS R., ELIZABETHTON, TN	08/06/96
KAISER-COELLO, KAREN K., PARKLAND, FL	07/17/96
KATZ, ALAN S., NEW CITY, NY	08/13/96
KEE, VALLERIE B., FREDERICK, MD	08/08/96
LACY, SHARON J., GUERNEVILLE, CA	08/11/96
LAMB, ROBERT D., SEBASTOPOL, CA	08/11/96
LAUGHTER, JAMES S., SAN DIEGO, CA	08/11/96
LEES, COREY R., HARRISBURG, PA	08/08/96
LEWIS, EDWARD L., AUBURN, CA	08/11/96
MAST, BARRY C., CAMARILLO, CA	08/11/96
MAYFIELD-ANDREWS, SHERYL A., SAN DIEGO, CA	08/11/96
MILLER, ALAN KENT, MONROEVILLE, PA	08/08/96
MITCHELL, ALBERT, PHILADELPHIA, PA	07/02/96
NEIS-WHINERY, RAMONA, KANSAS CITY, KS	08/13/96
NICKELL, SCOTT B., FENTON, MO	08/12/96
NORIE, JOHN B., PALM SPRINGS, CA	08/11/96
OLIVER, MONTE B., LINDALE, TX	08/13/96
PLACIDE, FRANTZ, EL PASO, TX	08/13/96
PORADA, STANLEY L., CRESTWOOD, IL	08/12/96
ROCHA, MARK W., ANZA, CA	08/11/96
SALMON, KEVIN M., PALOS HEIGHTS, IL	08/12/96
SCHINKAI, DAVID JAMES, LAKEPORT, MI	08/12/96
SMITH, JONATHAN M., DECATUR, IN	08/12/96
SOHRAB, NEDA, COSTA MESA, CA	08/11/96
STRATTON, MARK W., DUQUOIN, IL	08/12/96
THOMPSON, SAM, ELMIRA, NY	08/13/96
URLING, WENDELL P., CHESHIRE, CT	08/13/96
VON BRINCKEN, FREDERICK, SEDONA, AZ	08/11/96
WAHL, DAVID G., MONTGOMERY, MN	08/12/96
WALBURN, KEITH J., OCALA, FL	08/06/96
WEBER, GEORGE L., HORSHAM, PA	08/08/96
WOYWOOD, ROGER B., DALLAS, TX	08/13/96
SECTION 1128Aa	
BAILEY, JOHN L., CHANNELVIEW, TX	08/13/96

Dated: August 2, 1996.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 96–20664 Filed 8–13–96; 8:45 am]

BILLING CODE 4150–04–P

National Institutes of Health

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: August 16, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4142, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4142, Bethesda, Maryland 20892, (301) 435–1715.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: August 7, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–20669 Filed 8–13–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 12, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4210 (Telephone Conference).

Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 13, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4210 (Telephone Conference).

Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 14, 1996.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4210 (Telephone Conference).

Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 8, 1996.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 96–20765 Filed 8–9–96; 3:12 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–055–06–1430–01; AZA–25117]

Arizona: Notice of Realty Action; Lease of Public Lands for Airport Purposes in La Paz County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of Public Lands for Airport Purposes Lease.

SUMMARY: The following described public lands in La Paz County, Arizona, have been examined and found suitable for lease under the provisions of the Act of May 24, 1928 (49 U.S.C. Appendices 211–213). The Town of Quartzsite proposes to use the land for a Community Airport.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 18 W.,

Sec. 19, those lands south of Interstate 10 within lot 4, SE¼SW¼, S½SE¼;

Sec. 30, lots 1 to 4, inclusive, E½, E½W½;

Sec. 31, lots 1 to 4, inclusive, E½, E½W½.

The area described contains approximately 1,380 acres.

SUPPLEMENTARY INFORMATION: The land is not required for any Federal purposes. The lease is consistent with current Bureau planning for this area and would be in the public interest. The lease when issued would be subject to the following terms, conditions, and reservations:

1. Provisions of the Airport Act of May 24, 1928, and to all applicable regulations of the Secretary of the Interior.

2. A 15 foot wide right-of-way (AZA 22287) for a buried communication cable.

3. A road right-of-way (AZPHX 086772) for a county road.

4. A 50 foot wide right-of-way (AZA 21968) for a natural gas pipeline.

DATES: Upon publication of this notice in the Federal Register, the above described lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Airport Act of May 24, 1928. The segregative effect will end upon issuance of the lease or 1 year from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease of the lands to the District Manager, Yuma District Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365.

EFFECTIVE DATE: In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Dave Curtis, Yuma Area Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3237.

Dated: August 2, 1996.

Gail Acheson,

Acting District Manager.

[FR Doc. 96–20656 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–32–M

[NM–018–96–1430–02; NMNM 95860]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Santa Fe County, New Mexico have been examined and found suitable for classification for lease or conveyance to the Royal City Radio Control Club, Inc., under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Royal City Radio Control Club, Inc. proposes to use the lands for a radio controlled model aircraft flying site.

New Mexico Principal Meridian

T. 16 N., R. 7 E.,

Sec. 1: within Lot 7.

Containing approximately 2 acres +/−.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/conveyance, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Taos Resource Area, 226 Cruz Alta, Taos, NM 87571.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, BLM Albuquerque District Office, 435 Montaño NE, Albuquerque, New Mexico 87107.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a radio controlled model aircraft flying site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a radio controlled model aircraft flying site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Dated: August 2, 1996.

Michael R. Ford,

District Manager.

[FR Doc. 96–20746 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–FB–P

National Park Service

Notice of Intention to Extend an Existing Concession Contract

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given that the National Park Service intends to extend the concession contract with Katmailand, Inc., at Katmai National Park for a period of approximately 3 years through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Rhea, Acting Senior Contract Analyst, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892. Phone (907) 257–2529.

SUPPLEMENTARY INFORMATION: The concession contract with Katmailand, Inc., authorizing it to provide lodging, food service, transportation, and other services within Katmai National Park expired by limitation of time on December 31, 1995, and was extended until December 31, 1996. The National Park Service does not intend to issue a prospectus soliciting bids for a contract for an extended period until planning can be conducted to determine the future direction for concession services at this site. The planning may affect the future of this operation, and may take as long as 3 years to complete. Until planning is concluded, it is not in the best interest of the National Park Service to enter into a long-term concession contract for this operation. This extension may be for a lesser period should planning conclude and a renewal process be conducted which results in the award of a new long-term concession contract. This existing concessioner has performed its obligations to the satisfaction of the Secretary and, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to a preference in the extension of this contract. This means that the extension will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. Section 1307 of the Alaska National Interest Lands Conservation Act established certain rights and preferences for continuing and selecting visitor service providers. Consideration and application of Section 1307 will occur at the time of award. If the existing concessioner does not agree to the terms of the extension, the right of preference shall be considered to have been waived, and the extension will then be awarded to the party submitting the best responsive offer.

Because of the limited term of the proposed extension, the National Park Service is not encouraging the submission of offers by anyone but the incumbent in response to this proposal, but plans to do so at the time the contract is renewed for a longer term. However, as required by law, the National Park Service will consider and evaluate all offers received in response to this notice. Anyone interested in obtaining further information about this proposed extension should contact Rebecca Rhea, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892 (phone 907–257–2529) no later than 15 days following publication of this notice to obtain a prospectus outlining the requirements of the proposed extension. Any offer submitted as a result of this notice must be received by the Alaska Field Office no later than 30 days after the date of publication of this notice.

Robert D. Barbee,

Alaska Field Director.

[FR Doc. 96–20632 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–M

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESSES: Tuesday, September 3, 1996; 5:15 p.m. to 6:30 p.m., Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA: This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: July 25, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–20732 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Tuesday, October 29, 1996; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

AGENDA TOPICS INCLUDE: The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Public Law 102–543 on October 27, 1992.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, William O. Fink, P.O.

Box 471, Calumet, Michigan 49913–0471, 906–337–3168.

Dated: July 25, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–20731 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESS: Wednesday, September 11, 1996, 6:30 p.m. to 9:30 p.m.; Hastings City Hall, Community Room, 101 Fourth Street East, Hastings, Minnesota.

AGENDA: An agenda for the meeting will be available by September 4, 1996. Contact the Superintendent of the Mississippi National River and Recreation Area (MNRRA) at the address listed below. Public statements about matters related to the MNRRA will be accepted at this time.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, dated November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 (612–290–4160).

Dated: July 30, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–20730 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–P

Missouri National Recreational River Advisory Group

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESSES: Thursday, August 22, 1996; 1:30 p.m.; City Hall Conference Room, Wagner, South Dakota.

AGENDA TOPICS INCLUDE:

1. Review of changes incorporated into the draft general management plan for the recreational rivers.
2. Review of public comments received regarding the 39-mile draft general management plan and environmental impact statement.
3. The opportunity for public comment and proposed agenda, date, and time of the next advisory group meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the commission or file written statements. Requests of time for making presentations may be made to the Superintendent prior to the meeting or to the chairman at the beginning of the meeting. In order to accomplish the agenda, the chairman may want to limit or schedule public presentations. The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Group was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile free flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, 402–336–3970.

Dated: July 25, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–20733 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 3, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 29, 1996.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Pope County

Russellville Downtown Historic District, Roughly bounded by W. 2nd St., Arkansas Ave., Missouri—Pacific RR tracks and El Paso St., Russellville, 96000941

California

Sierra County

Forest City, Off of Mountain House Rd., jct. of North and South Forks, Tahoe National Forest, Forest City, 96000942

Florida

Dade County

McMinn—Horne House (Homestead MPS), 25 N.E. 12th St., Homestead, 96000943

Idaho

Bannock County

Pocatello Warehouse Historic District, Roughly bounded by S. 2nd Ave., E. Halliday, E. Sutter, and the OSL RR tracks, Pocatello, 96000946

Latah County

Kappa Sigma Fraternity, Gamma Theta Chapter, 918 Blake St., Moscow, 96000945

Twin Falls County

Twin Falls Canal Company Building, 162 2nd St., W, Twin Falls, 96000944

Kansas

Douglas County

Snow House, 706 W. 12th St., Lawrence, 96000947

Maryland

Worcester County

Simpson's Grove, E side Downs Rd., approximately 2 mi. SW of jct. of US 50 and US 113, Ironshire vicinity, 96000949

Young—Sartorius House, 405 Market St., Pocomoke City, 96000948

Massachusetts

Hampshire County

The Town Farm, 75 Oliver St., Easthampton, 96000950

Nantucket County

Lynn Woods Historic District, Roughly bounded by Lynnfield St., Bow Ridge, Great Woods Rd., Parkland Ave., Walnut St., Saugus Line, Lynn, 96000951

Munroe Street Historic District, Bounded by Market, Oxford, Washington Sts. and MBTA Commuter Rail, Lynn, 96000952

New Hampshire

Cheshire County

Drewsville Mansion, Old Cheshire Trnpke., S end of Drewsville Village common, Walpole, 96000953

Rockingham County

John Elkins Farmstead, 156 Beach Plain Rd., Danville, 96000955

Portsmouth Cottage Hospital, Junkins Ave., S side of South Mill Pond, Portsmouth, 96000954

New York

Jefferson County

St. Paul's Church (Historic Churches of the Episcopal Diocese of Central New York MPS), 210 Washington St., Brownville, 96000960

Madison County

St. Paul's Church (Historic Churches of the Episcopal Diocese of Central New York MPS), 204 Genesee St., Chittenango, 96000956

New York County

W. O. DECKER (tugboat), 207 Front St., Pier No. 16, South Street Seaport Museum, New York, 96000962

Oneida County

St. Mark's Church (Historic Churches of the Episcopal Diocese of Central New York MPS), 19 White St., Clark Mills, 96000957

St. Paul's Church and Cemetery (Historic Churches of the Episcopal Diocese of Central New York MPS), Rt. 12, jct. with Snowden Hill Rd., Paris Hill, 96000961

St. Stephen's Church (Historic Churches of the Episcopal Diocese of Central New York MPS) 22–27 Oxford St., New Hartford, 96000959

Oswego County

St. James' Church (Historic Churches of the Episcopal Diocese of Central New York MPS), North St., jct. with Bridge St., Cleveland, 96000958

North Carolina

Guilford County

Fisher Park Historic District (Boundary Increase), 507 N. Church St., Greensboro, 96000963

Ohio

Cuyahoga County

Jones Home for Children (Brooklyn Centre MRA), 3518 W. Twenty-fifth St., Cleveland, 87002636

Franklin County

Old North End Historic District, Roughly bounded by I–670, Pearl St., E. 2nd Ave., and N. 4th St., Columbus, 96000964

Pennsylvania

Montgomery County

Mill Creek Historic District (Boundary Increase), Roughly bounded by the Schuylkill River, Mill Cr., Righter's Mill, Rose Glen, and Monk's Rds., Lower Merion Township, Gladwyne, 96000965

Tennessee

Knox County

Knoxville National Cemetery (Civil War National Cemeteries MPS), 939 Tyson St., NW, Knoxville vicinity, 96000966

Texas

Travis County

Camp Mabry Historic District, 2210 W. 35th St., Austin, 96000967

[FR Doc. 96–20633 Filed 8–13–96; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Report to the President on Investigations Nos. TA–201–65 and NAFTA–302–1; Broom Corn Brooms [1]

Investigation No. TA–201–65

Determinations and Findings With Respect to Injury

On the basis of the information in the investigation—

Chairman Rohr and Commissioners Newquist, Nuzum, and Bragg—

(1) Determine that broom corn brooms are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing an article like or directly competitive with the imported article; and

(2) find, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act, that imports of broom corn brooms produced in Mexico account for a substantial share of total imports of such brooms and contribute importantly to the serious injury caused by imports; but find that imports of broom corn brooms produced in Canada do not account for a substantial share of total imports and thus do not contribute importantly to the serious injury caused by imports.

Commissioners Crawford and Watson determine that broom corn brooms are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

Findings and Recommendations With Respect to Remedy

Chairman Rohr and Commissioner Newquist—

(1) Recommend that the President increase the rate of duty, for a 4-year period, on each of the categories of imports of broom corn brooms that are the subject of this investigation to a rate equal to the column 1 general rate of duty plus 12 percent ad valorem in the first year, 9 percent ad valorem in the second year, 6 percent ad valorem in the third year, and 3 percent ad valorem in the fourth year;

(2) having found that imports the product of Mexico account for a substantial share of total imports and have contributed importantly to the serious injury, recommend that Mexico not be excluded from this relief action; but having made a negative finding with respect to imports the product of Canada, recommend that such imports be excluded from any relief action;

(3) recommend that the President, for the duration of the relief action, suspend duty-free treatment on the subject articles entered from Caribbean Basin and Andean countries and apply the column 1 general rate plus the additional ad valorem rates of duty described above to imports from such countries; and

(4) recommend that this import relief action not apply to imports the product of Israel.

They find that this remedy will address the serious injury that they have found to exist and will be the most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition. This remedy recommendation incorporates their separate recommendation with regard to NAFTA–302–1, discussed below.

Commissioners Nuzum and Bragg—

(1) Recommend that the President impose a rate of duty, in lieu of the current column

[1] Broom corn brooms are provided for in subheadings 9603.10.05, 9603.10.15, 9603.10.35, 9603.10.40, 9603.10.50, and 9603.10.60 of the Harmonized Tariff Schedule of the United States (HTS).

1 general rate of duty or preferential rate of duty in effect under NAFTA, the Caribbean Basin Economic Recovery Act, or the Andean Trade Preference Act, as the case may be, on imports of broom corn brooms other than whisk brooms, as follows—

40 percent in the first year of relief;
32 percent in the second year of relief;
24 percent in the third year of relief; and
16 percent in the fourth year of relief.

Where a higher rate of duty would otherwise apply to imports from any country, in any year, that higher rate would take effect.

(2) Recommend that this import relief action not apply to imports produced in Israel or Canada.

They find that this remedy will address the serious injury that they have found to exist and will be the most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Investigation No. NAFTA–302–1

Determinations With Respect to Injury

On the basis of the information in the investigation—

Chairman Rohr and Commissioners Newquist, Crawford, Nuzum, and Bragg determine that, as a result of the reduction or elimination of a duty provided for under the NAFTA, broom corn brooms produced in Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Commissioner Watson determines that broom corn brooms from Mexico are not, as a result of the reduction or elimination of a duty provided for under the NAFTA, being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or threat of serious injury to the domestic industry producing an article that is like, or directly competitive with, the imported article.

Findings and Recommendations With Respect To Remedy

Chairman Rohr and Commissioners Newquist and Bragg find and recommend that, in order to remedy serious injury, it is necessary for the President, for a 3-year period, to increase the rate of duty on imports of broom corn brooms produced in Mexico receiving tariff preferences under NAFTA to the column 1 general rate of duty currently imposed under the HTS on such brooms. This remedy recommendation is incorporated into Chairman Rohr's and Commissioner Newquist's various recommendations with regard to TA–201–65, discussed above. Commissioner Bragg excludes whisk brooms from this remedy recommendation.

Commissioner Crawford finds and recommends that, in order to remedy serious injury, it is necessary for the President, for a 2-year period, to increase the rate of duty on imports of broom corn brooms from Mexico receiving tariff preferences under NAFTA to the column 1 general rate of duty currently imposed under the HTS on such brooms.

Commissioner Nuzum finds and recommends that, in order to remedy serious injury, it is necessary for the President, for a 3-year period, to increase the rate of duty on imports of broom corn brooms, except whisk brooms, from Mexico receiving tariff preferences under NAFTA as follows—

(1) For the first 2 years, to the column 1 general rate of duty currently imposed under the HTS on such brooms; and

(2) For the third year, to a rate that is one-half the difference between the current column 1 general rate of duty and the rate of duty that is currently scheduled to be in effect at the end of the 3-year period.

Background

Following receipt of petitions filed on March 4, 1996, on behalf of the U.S. Cornbroom Task Force and its individual members, the Commission instituted Investigations Nos. TA–201–65 and NAFTA–302–1. Notice of the institution of the Commission's investigations and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC and by publishing the notice in the Federal Register of March 18, 1996 (61 FR 11061). The hearings (May 30, 1996, for the injury phase and July 11, 1996, for the remedy phase) were held in Washington, DC, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the President on August 1, 1996. The views of the Commission are contained in USITC Publication 2984 (August 1996), entitled ''Broom Corn Brooms: Investigations Nos. TA–201–65 and NAFTA–302–1.''

Dated: Issued: August 7, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20724 Filed 8–13–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–556 (Final) (Remand)]

DRAMS of One Megabit and Above From the Republic of Korea; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U. S. International Trade Commission (the Commission) hereby gives notice of the Court-ordered remand of its final antidumping investigation No. 731–TA–556 (Final) for reconsideration in light of the Department of Commerce's revised final determination.

EFFECTIVE DATE: August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Messer, Office of Investigations, telephone 202–205–3193 or Robin L. Turner, Office of General Counsel, telephone 202–205–3103, U. S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION

Background

On July 5, 1996, the Court of International Trade issued a remand Order to the Commission in *Hyundai Electronics Industries* v. *U.S. International Trade Commission*, Ct. No. 93–06–00319, Slip. Op. 96–105. That case involved review of the Commission's May 1993 affirmative determination in DRAMs of One Megabit and Above from the Republic of Korea, Inv. No. 731–TA–556 (Final). The CIT ordered the Commission to reconsider its final determination in light of the Department of Commerce's revised final determination, which found Samsung's dumping margin to be *de minimis* and, thus, its imports excluded from the scope of the DRAM antidumping order.

Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek clarification regarding data in importers

questionnaires in the final investigation, and to permit parties to file briefs.

Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (''APO'') and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (''APO'') in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants not covered under the original APO, provided that application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the Federal Register. Applications must be filed for persons on the Judicial Protective Order in the related CIT case, who are not under the original APO and wish to participate in the remand investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

Written Submissions

Briefs should be concise, limited to the issue of exclusion of Samsung's imports, and thoroughly referenced to information on the record in the original investigation or information obtained during the remand investigation. Written briefs shall be limited to thirty (30) pages, and must be filed no later than close of business on September 9, 1996. No further submissions will be permitted unless otherwise ordered by the Commission.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: August 7, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20723 Filed 8–13–96; 8:45 am]

BILLING CODE 7020–02–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 21, 1996 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–736–737 (Final) (Large Newspaper Printing Presses and Components Thereof Whether Assembled or Unassembled from Germany and Japan)—briefing and vote.
5. Outstanding action jackets:
   1. ID–96–014, Industry and Trade Summary: U.S. Radar and Certain Radio Apparatus Industry Restructures in Light of Reduced Demand and Sustained Foreign Competition.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 12, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–20876 Filed 8–12–96; 3:28 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 18, 1996, a proposed Consent Decree in *United States* v. *Georgia-Pacific Corporation,* (N.D.GA.) (Civil No. 1 96–CV–1818–FMH), was lodged with the U.S. District Court for the Northern District of Georgia, Atlanta Division. The United States filed its compliant in this action simultaneously with the consent decree, on behalf of the Environmental Protection Agency (''EPA'') pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b). The complaint seeks injunctive relief and civil penalties for violations of the Act and regulations promulgated thereunder at eighteen wood processing facilities located in Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Virginia.

The complaint alleged that Georgia-Pacific Corporation (''G-P'') failed to obtain permits required by the Prevention of Significant Deterioration (''PSD'') regulations prior to making major modifications at these facilities. As a result, G-P's facilities are emitting significant amounts of volatile organic compounds (''VOCs''). Alternatively, the complaint alleges that even if the modifications at G-P's facilities did not trigger PSD, G-P still had an obligation to obtain construction permits for the modifications. Finally, the complaint alleges that G-P violated provisions of state implementation plans by failing to report VOC emissions on various permit applications.

Under the terms of the settlement, G-P will apply for PSD or federally enforceable state minor source permits for modifications at the 18 facilities, install state-of-the-art pollution control equipment at 11 of those plants, and agree to strict production limits at 2 additional plants. The consent decree requires a 90% reduction of VOC emissions from G-P's plywood and OSB dryers. In addition, for the remaining plants where G-P made modifications to its plywood presses, the consent decree obligates G-P to seek determinations from the state in which the facility is located of Best Available Control Technology for control of emissions resulting from the plywood presses.

The Consent Decree also requires G-P to conduct comprehensive Clean Air Act audits of all 26 of its wood product facilities nationwide and to monitor compliance with emission limits on a daily basis. In addition, G-P will pay a civil penalty of $6 million and perform Supplemental Environmental Projects that will cost $4.25 million.

The Consent Decree provides that G-P's satisfaction of all of the requirements of the Decree will constitute full settlement of, and will resolve all civil and administrative liability of G-P to the United States for, PSD and minor source permitting violations covering all criteria pollutants for the modifications listed in Schedule C to the Consent Decree, and for any other violations alleged in the Environmental Protection Agency's August 5, 1994 and May 18, 1995 Notices of Violation, or in the United States' Complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Georgia-Pacific Corporation,* D.J. ref. 90–5–2–1–1851.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Georgia, Atlanta Division, 1800 U.S. Courthouse, 75 Spring St., S.W., Atlanta, Georgia 30335 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $28.00 ($0.25 per page for reproduction costs) payable to: Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–20686 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

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. *Dennis Gerbaz, et al.,* Civil No. 89–M–554 (D. Colo.), was lodged with the United States District Court for the District of Colorado on August 5, 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 dredge and fill material into portions of the Roaring Fork River without a permit from the U.S. Army Corps of Engineers. The Under the Consent Decree, the settling defendants will perform certain river restoration and stabilization requirements for portions of the Roaring Fork River, in accordance with the Master Plan. The Master Plan establishes a river restoration and stabilization plan for portions of the Roaring Fork River.

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 addressed to David J. Kaplan, Attorney, U.S. Department of Justice, Environmental Defense Section, Environment and Natural Resources Division, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *Dennis Gerbaz, et al.,* Civil No. 89–M–554 (D. Colo.).

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the District of Colorado, United States Court House, 1929 Stout Street, Rm C–145, Denver, Colorado 80294.

Anna Wolgast,

Acting Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 96–20688 Filed 8–13–96; 8:45 a.m.]

BILLING CODE 4410–01–M

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 C.F.R. § 50.7, notice is hereby given that two Consent Decrees in *United States* v. *Ralph Riehl, et al.,* Civil Action No. 89–226(E), were lodged with the United States District Court for the Western District of Pennsylvania on August 1, 1996.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the ''Site''), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a). In September 1991, the United States added additional defendants to the action. The two proposed Consent Decrees resolve the liability of Joseph and Evelyn Halmi, Tri-Penn Tool Company, and Buffalo Molded Plastics Company. These Consent Decrees resolve the liability of the above-named defendants and third-party defendant (Tri-Penn Tool Company) for the response costs incurred and to be incurred by the United States at the Site. Joseph and Evelyn Halmi and Tri-Penn Tool Company will pay $100,000 in response costs. Buffalo Molded Plastics Company will pay $85,000 in response costs.

The Department of Justice will accept written comments relating to these proposed Consent Decrees for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl, et al.,* DOJ No. 90–11–3–519.

Copies of the proposed Consent Decrees may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and States Streets, Erie, Pennsylvania, 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892). A copy of the proposed Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decrees, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the following amounts:

$6.00 for the Halmi/Tri-Penn Consent Decree

$6.00 for the Buffalo Molded Plastics Consent Decree

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–20685 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Filing of Settlement Stipulation and Clarifying Amendment, Regarding Matters Relating to Alleged Violations of Standards Regulating Underground Storage Tanks

In accordance with Departmental policy, notice is hereby given that a proposed Environmental Cleanup Settlement Stipulation (''Stipulation'') in *In re Yellow Cab Cooperative Association* (''Yellow Cab''), Bankr. No. 93–23733 (D.Colo.), was filed on April 25, 1996, with the United States Bankruptcy Court for the District of Colorado. The Bankruptcy Court's approval of the Stipulation is subject to action by the United States in response to any comments which may be received from the public during a thirty day public comment period, required under 28 CFR 50.7, which commences with publication of this Notice. The parties to the Stipulation, Yellow Cab (''Debtor'') and the United States, have also entered into a Clarifying Amendment to Environmental Cleanup Settlement Stipulation. The Clarifying Amendment was filed with the Bankruptcy Court on July 31, 1996, and is also subject to public comment. The United States has entered into the Stipulation and Clarifying Amendment on behalf of the United States Environmental Protection Agency (''EPA'').

The Stipulation and Clarifying Amendment resolve an adversary

complaint and application for the allowance of an unliquidated administrative priority claim filed by the United States against the Debtor as the result of Debtor's alleged violations of standards regulating the usage and closure of underground storage tanks (''USTs''), found at 40 CFR Part 280 and promulgated under Section 9003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6991b. Under the Stipulation and Clarifying Amendment, Debtor is required to escrow $400,000 which will be used to: remove seven USTs at Debtor's property, properly dispose of the USTs and any residual contents remaining in them, conduct a site assessment (to be reviewed by EPA and two Colorado agencies) and, if necessary, perform corrective action. If the site assessment suggests that corrective action likely will cost more than $400,000, Debtor is to focus its corrective action efforts upon cleaning up petroleum based contamination. If it develops that less than $400,000 is needed to abate the UST violations, the unused funds will be returned to Debtor's estate for the benefit of the unsecured creditors. In the event that EPA, Colorado authorities, and Debtor's consultant are not able to agree within nine months of the entry of the Stipulation on all terms of any necessary corrective action plan, Debtor would perform corrective action according to the draft plan most acceptable to EPA.

The Clarifying Amendment states that Debtor (or any trustee appointed to liquidate Debtor's assets under Chapter 11 of the Bankruptcy Code, or any Chapter 7 trustee of the Debtor's estate) could be liable for contamination of Debtor's property that occurred after the date that the Stipulation was filed with the Court and that the Stipulation does not resolve or affect in any way any criminal liability which may exist under any federal statute. Further, the Clarifying Amendment states that the United States waives and withdraws its general unsecured claim for civil penalties in the approximate amount of $48,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation and Clarifying Amendment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Yellow Cab Cooperative Association,* DOJ Ref. # 90–7–1–761.

The proposed Stipulation and Clarifying Amendment may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1100, Denver, CO 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Stipulation and Clarifying Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. The Stipulation and Clarifying Amendment total 20 pages altogether. The Exhibits to the Clarifying Amendment total 30 pages. To obtain a copy of the Stipulation and Clarifying Amendment without the Exhibits, please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library. To obtain the Exhibits in addition to the Stipulation and Clarifying Amendment, please enclose a total of $12.50.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–20687 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on July 27, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Lockheed Martin, Orlando, FL, has agreed to participate in the High Reliability (HRM) Project. Southwestern Bell Telephone Company, St. Louis, MO, has agreed to participate in the QUEST Project. Lucent Technologies, Murray Hill, NJ, has agreed to participate in the Low Cost Portables Project. Andersen Consulting has withdrawn from the venture.

On December 21, 1984, MCC filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to § 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed on September 10, 1995. The Department of Justice published a notice in the Federal Register on May 14, 1996 (61 FR 24332).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–20660 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on June 6, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Cascade Communications Corporation, Westford, MA; and Pacific Bell, San Francisco, CA are Corporate Members. Broadcom Eireann Research, Ltd., Dublin, IRELAND; CNet, Inc., Plano, TX; Hughes Network Systems, Germantown, MD; LINMOR Information Systems Mgmt., Inc., Ottawa, Ontario, CANADA; Metrica Systems Ltd., Richmond, Surrey, ENGLAND; Network Designs Corporation, Redmond, WA; Objectivity, Inc., Mountain View, CA; Smart Com, Inc., Ljubljana, SLOVENIA; Talarian Corporation, Mountain View, CA; Telecommunications Techniques Corp. (TTC), Germantown, MD; Telops Management, Inc., Los Angeles, CA; and Texas Instruments Software, Wiesbaden, GERMANY are Associate Members. Military Communication Institute, Zegrze, POLAND; SHAPE Technical Centre, The Hague, THE NETHERLANDS; and Soundview Financial Group, Inc., Stamford, CT are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group

research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on March 5, 1996. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on May 20, 1996 (61 FR 25243).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–20658 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OPC Foundation

Notice is hereby given that, on July 15, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the OPC Foundation (''OPCF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Fisher-Rosemount Systems, Inc., Austin, TX; Intellution, Norwood, MA; OPTO 22, Temecula, CA; and Rockwell Software, Inc., Milwaukee, WI.

OPCF's area of planned activity is to develop and publish an OPC Standard; cooperate with OPCF members and third parties to develop software implementations of the OPC Standard; develop engineer's test tools, tests of software implementations, and other services for OPCF members; sponsor interoperability tests and demonstrations for products based on the OPC Standard; and keep the public informed about the state of engineering, application, and further developments concerning the OPC Standard.

Membership in OPCF will be open to any individual or entity that supports the objectives of the Organization and subscribes to its bylaws.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–20659 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 18, 1996, and published in the Federal Register on June 26, 1996, (61 FR 33139), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	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 Arenol Chemical Corporation to import methamphetamine and phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 7, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–20727 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–-09–M

Immigration and Naturalization Service

Agency Information Collection Activities: New collection; Comment Request

ACTION: Notice of information collection under review; Joint Employment Verification Pilot (JEVP).

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register on May 29, 1996, at 61 FR 26933, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the Federal Register. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The proposed collection is listed below:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Joint Employment Verification Pilot (JEVP).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–963. Office of Management, SAVE, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information collection will be used by the Immigration and

Naturalization Service and the Social Security Administration to verify employment authorization for all new employees regardless of citizenship for those companies participating in the Joint Employment Verification Pilot.(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 respondents at 3.5 hours per response, and 400,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 36,700 annual burden hours.

Public comments on this proposed information collection is strongly encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20693 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Extension of Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; application for advance permission to return to unrelinquished domicile.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' from the date listed at the top of this page in the Federal Register.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodoly and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this informaiton collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Return to Unrelinquished Domicile.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–191, Office of Examinations, Adjudications, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on this form will be used by the Service to determine whether an application is eligible for discretionary relief under section 212(c) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 300 respondents 15 minutes (.250) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 9, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20694 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Justice Programs

Office of the Controller; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; U.S. Department of Justice insurance related criminal referral form.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Maureen Smythe, 202–616–3505, Office of the Controller, Office of Justice Programs, U.S. Department of Justice, Room 942, 633 Indiana Avenue, NW., Washington, DC 20531. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Cynthia J. Schwimer, 202–307–3186, Director, Financial Management Division, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* United States Department of Justice Insurance Related Criminal Referral Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: None. Office of the Controller, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State and local governments, private non profit organizations, and businesses or other for profit organizations.

This form is used to encourage state and federal agencies, insurance companies, and insurance trade associations to refer significant criminal activity for Federal prosecution. It will enable the Department to ensure that all cases are being investigated appropriately, and that all related investigations are coordinated.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 respondents with an average of 1 hour per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: August 8, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–20673 Filed 8–13–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: September 16, 1996, from 9:00 a.m. to 10:30 a.m.

ADDRESSES: United States Capitol Building, LBJ Room (S–211).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda

National Archives and Records Administration Strategic Plan

Update—Center for Legislative Archives

Archival Impact of Technology on congressional documentation

Other current issues and new business.

The meeting is open to the public.

Dated: August 6, 1996.

L. Reynolds Cahoon,

Assistant Archivist for Policy and IRM Services.

[FR Doc. 96–20657 Filed 8–13–96; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 3:00 p.m. Thursday, August 8, 1996.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Hollace J. Enoch, Associate Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

By direction of the Board.

Dated, Washington, D.C. August 9, 1996.

Hollace J. Enoch,

Associate Executive Secretary, National Labor Relations Board.

[FR Doc. 96–20849 Filed 8–12–96; 3:28 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Proposed Collection: Comment Request

Title of Proposed Collection

National Science Foundation Proposal Evaluation Process.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance Officer at (703) 306–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project Proposal Evaluation Process

The missions of the NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future; and promote international cooperation in science and engineering. The Foundation is also committed to ensuring the Nation's supply of scientists, engineers and science educators. In its role as leading Federal supporter of science and engineering, NSF also has an important role in national policy planning.

The Foundation fulfills this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. This support is made primarily through grants, contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses.

The Foundation relies heavily on the advice and assistance of external advisory committees, ad-hoc proposal reviewers, and to other experts to ensure

that the Foundation is able to reach fair and knowledgeable judgments. These scientists and educators come from colleges and universities, nonprofit research and education organizations, industry, and other Government agencies.

In making its decisions on proposals the counsel of these merit reviewers has proven invaluable to the Foundation both in the identification of meritorious projects and in providing sound basis for project restructuring.

Review of proposals may involve large panel sessions, small groups, or use of a mail-review system. Proposals are reviewed carefully by scientists or engineers who are expert in the particular field represented by the proposal. About one-fourth are reviewed by mail reviewers alone. Another one-fourth are reviewed exclusively by panels of reviewers who gather, usually in Washington, to discuss their advice as well as to deliver it. The remaining one-half are reviewed first by mail reviewers expert in the particular field, then by panels, usually of persons with more diverse expertise, who help the NSF decide among proposals from multiple fields or sub-fields.

Use of the Information

The information collected is used to support grant programs of the Foundation.

The information collected on the proposal evaluation forms is used by the Foundation to determine the following criteria when awarding or declining proposals submitted to the agency: (1) Research performance competence; (2) Intrinsic merit of the research; (3) Utility or relevance of the research; and (4) Effect of the research on the infrastructure of science and engineering.

The information collected on reviewer background questionnaires is used by managers to maintain an automated data base of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, ethnicity is used in meeting NSF needs for data to permit response to congressional and other queries into equity issues. These data are also used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education.

Confidentiality

Verbatim but anonymous copies of reviews are sent to the principal investigators/project directors. Subject to this NSF policy and applicable laws, including the Freedom of Information Act, reviewers' comments will be given maximum protection from disclosure.

While listings of panelists' names are released, the names of individual reviewers, associated with individual proposals, are not released to anyone.

Because the Foundation is committed to monitoring and identifying any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s), the Foundation also collects race, ethnicity, disability, and gender. This information is also protected by the Privacy Act.

Burden on the Public

The Foundation estimates that anywhere from one hour to twenty hours may be required to review a proposal. It is estimated that approximately five hours are required to review an average proposal. Each proposal receives an average of seven reviews.

Send comments to Herman Fleming, Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by October 4, 1996.

Dated: August 8, 1996.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 96–20735 Filed 8–13–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of The Cleveland Electric Illuminating Company (the licensee) to withdraw its November 2, 1995, application for proposed amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The proposed amendment would have revised the technical specifications pertaining to the energization of 120 volt AC buses EV–1–A and EV–1–B from either their normal inverter power supply or from their alternate power supply.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on December 6, 1995 (60 FR 62497). However, by letter dated July 23, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 2, 1995, and the licensee's letter dated July 23, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 7th day of August 1996.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Sr. Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20680 Filed 8–13–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–440]

The Cleveland Electric Illuminating Company, et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of The Cleveland Electric Illuminating Company (the licensee) to withdraw its December 21, 1994, application for proposed amendment to Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio.

The proposed amendment would have revised the technical specifications pertaining to the Traversing In-Core Probe System to allow the use of substitute data generated from the process computer, normalized with available operating measurements, to replace data from inoperable local power range monitor (LPRM) strings for up to 10 LPRM strings.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on February 1, 1995 (60 FR 6310). However, by letter dated July 23, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 21, 1994, and the licensee's letter dated July 23, 1996, which withdrew the application for license amendment. The above documents are available for public

inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio.

Dated at Rockville, Maryland, this 7th day of August 1996.

For the Nuclear Regulatory Commission

Jon B. Hopkins,

Sr. Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20681 Filed 8–13–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–346]

Environmental Assessment and Finding of No Significant Impact

In the Matter of: Toledo Edison Company; Centerior Service Company; and The Cleveland Electric Illuminating Company; Davis-Besse Nuclear Power Station, Unit No. 1.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–3, issued to the Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station (DBNPS), located in Ottawa County, Ohio.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensees' application dated June 28, 1996, for an exemption from certain requirements of 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage.'' The requested exemption would allow the implementation of a hand geometry biometric system of site access control in conjunction with photograph identification badges and would allow the badges to be taken off site.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55(a), the licensee is required to establish and maintain an onsite physical protection system and security organization.

In 10 CFR 73.55(d), ''Access Requirements,'' it specifies in part that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' In 10 CFR 73.55(d)(5), it specifies in part that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further indicates that an individual not employed by the licensee (e.g., contractors) may be authorized access to protected areas without an escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area.''

Currently, unescorted access for both employee and contractor personnel into the DBNPS is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. The picture badges are issued, stored, and retrieved at the entrance/exit location to the protected area. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensees' employees are also not allowed to take their picture badges off site. The licensees propose to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area. The proposal would also allow contractors who have unescorted access to keep their picture badges in their possession when departing the DBNPS site. In addition, the site security plans will be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the DBNPS site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. In addition to their picture badges, all individuals with authorized unescorted access will have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must have not only their picture badges to gain access into the protected area, but must also have their hand geometry confirmed.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. The proposed system is only for individuals with authorized unescorted access and will not be used for individuals requiring escorts.

The underlying purpose for requiring that individuals not employed by the licensees must receive and return their picture badges at the entrance/exit is to provide reasonable assurance that the access badges could not be compromised or stolen with a resulting risk that an unauthorized individual could potentially enter the protected area. Although the proposed exemption will allow individuals to take their picture badges off site, the proposed measures require that not only the picture badge be provided for access to the protected area, but also that verification of the hand geometry registered with the badge be performed as discussed above. Thus, the proposed system provides an identity verification process that is equivalent to the existing process.

Accordingly, the Commission concludes that the proposed exemption to allow individuals not employed by the licensees to take their picture badges off site will not result in an increase in the risk that an unauthorized individual could potentially enter the protected area. Consequently, the Commission concludes that granting the exemption will not increase the probability or consequences of accidents, will make no changes in the types of any effluents that may be released offsite, and will not significantly increase the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of

the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the DBNPS.

Agencies and Persons Consulted

In accordance with its stated policy, on July 22, 1996, the staff consulted with the Ohio State official, Carol O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensees' letter dated June 28, 1996, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 7th day of August 1996.

For the Nuclear Regulatory Commission.

Linda L. Gundrum,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–20679 Filed 8–13–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 12, 19, 26, and September 2, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12

There are no meetings scheduled for the Week of August 12.

Week of August 19—Tentative

There are no meetings scheduled for the Week of August 19.

Week of August 26—Tentative

Monday, August 26

2:00 p.m. Meeting with Chairman of Nuclear Safety, Research Review Committee (NSRRC) (public meeting), (Contact: Jose Cortez, 301–415–6596)

Tuesday, August 27

10:00 a.m. Briefing on Design Certification Issues (public meeting), (Contact: Jerry Wilson, 301–415–3145)

2:00 p.m. Briefing on Annealing Demonstration Project (public meeting), (Contact: Michael Mayfield, 301–415–6690)

Wednesday, August 28

10:00 a.m. Briefing on Certification of USEC (public meeting), (Contact: John Hickey, 301–415–7192)

11:30 a.m. Affirmation Session (public meeting) (if needed).

Week of September 2—Tentative

Thursday, September 5

10:30 a.m. Briefing by DOE on Status of HLW Program (public meeting)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov.

* * * * *

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96–20828 Filed 8–2–96; 11:03 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 20, 1996, through August 2, 1996. The last biweekly notice was published on July 31, 1996 (61 FR 40013).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that

failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 13, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for

amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 26, 1996

Description of amendments request: The proposed amendment will revise the appropriate Technical Specifications and their Bases to permit the electrosleeving repair technique developed by Framatome Technologies, Inc. to be used at Calvert Cliffs Nuclear Power Plant (CCNPP). Electrosleeving is a steam generator tube repair method where an ultra-fine grained nickel is electrochemically deposited on the inner surface of a tube to form a structural repair of the degraded tube. The electrodeposition of nickel provides a continuous metallurgical bond that eliminates all leak paths and macro-crevices. The electroformed sleeve provides a structural, leak-tight seal, without deforming or changing the microstructure of the parent tube. Thus, unlike the conventional welded sleeves, electrosleeving does not require a post-installation stress relief.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of the proposed steam generator tube electrosleeving has been reviewed for impact on the current CCNPP licensing basis.

Since the electrosleeve is designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code as guidance, it meets the objectives of the original steam generator tubing. The applied stresses and fatigue usage for the electrosleeve are bounded by the limits established in the ASME Code. American Society of Mechanical Engineers Code minimum material property values are used for the structural and plugging limit analysis. Mechanical testing has shown that the structural strength of nickel electrosleeves under normal, upset and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide 1.121. Burst testing of electrosleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

As in the original tube, the electrosleeve Technical Specification depth-based plugging limit is determined using the guidance of Regulatory Guide 1.121 and the pressure stress equation of Section III of the ASME Code. A bounding tube wall degradation growth rate per cycle and a nondestructive examination uncertainty has been assumed for determining the electrosleeve plugging limit.

Evaluation of the proposed electrosleeved tubes indicates no detrimental effects on the electrosleeve or electrosleeve-tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Calvert Cliffs. Corrosion testing of electrosleeve-tube assemblies indicates no evidence of electrosleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed electrosleeve has no significant effect on either the configuration of the plant, or the manner in which it is operated. The hypothetical consequences of failure of the electrosleeved tube is bounded by the current steam generator tube rupture analysis described in Section 14.15 of the Calvert Cliffs Updated Final Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis (depending on the break location), and therefore, would result in lower total primary fluid mass release to the secondary system.

Therefore, BGE [Baltimore Gas and Electric] has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any other accident previously evaluated.

As discussed above, the electrosleeve is designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed electrosleeve. Adhesion and ductility tests performed per ASTM [American Society for Testing and Materials] standards verified that the electrosleeve will not fail by de-bonding or cracking. In addition, the proposed electrosleeve does not interact with any other plant systems. Any accident as a result of potential tube or electrosleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed electrosleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed electrosleeves has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, BGE concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes via the use of the proposed electrosleeve restores the structural integrity of the faulted tube under normal operating and postulated accident conditions. The design safety factors utilized for the electrosleeve are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The repair limit for the proposed electrosleeve is consistent with that established for the steam generator tubes. The portions of the installed electrosleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of electrosleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. Use of the previously identified design criteria and design verification testing assures that the margin to safety with respect to the implementation of the proposed electrosleeve is not significantly different from the original steam generator tubes.

Therefore, BGE concludes that the proposed changes does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: April 8, 1996, as supplemented on July 30, 1996. This notice supersedes the Federal Register notice published on June 5, 1996 (61 FR 28607).

Description of amendment request: The licensee has proposed to revise the Technical Specifications (TS) to include the following changes: 1. The Minimum Critical Power Ratio (MCPR) Safety Limit specified in TS 2.1.2 from 1.07 to 1.10 for Unit 1 Cycle 11 operation; TS 5.3.1 to reflect the new fuel type (GE13) that will be inserted during Unit 1 Refueling Outage 10; 2. The acceptable range of sodium pentaborate concentration for the standby liquid control system shown in TS Figure

3.1.5-1 to reflect changes to poison material concentration needed to achieve reactor shutdown based on the new GE13 fuel type.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Proposed Change 1:

The proposed license amendment will allow the loading and use of GE13 fuel assemblies in the Brunswick Unit 1 reactor core. The use of GE13 fuel assemblies requires that the safety limit minimum critical power ratio value also be revised. The safety limit minimum critical power ratio is established to maintain fuel cladding integrity during operational transients. The GE13 fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energ's reload licensing methodology Topical Report NEDE-24011, ''General Electric Standard Application for Reactor Fuel (GESTAR II).''Based on a cycle-specific calculation performed by General Electric, a safety limit minimum critical power ratio value of 1.10 has been established for the GE13 fuel type for Brunswick Unit 1 Cycle 11 operation. The cycle-specific calculation has been performed in accordance with the methodology in Revision 12 of NEDE-24011. This cycle-specific calculation has demonstrated that a safety limit minimum critical power ratio value of 1.10 will ensure that 99.9 percent of the fuel rods avoid boiling transition during a transient event when all uncertainties are considered. The safety limit minimum critical power ratio value of 1.10 assures that fuel cladding protection equivalent to that provided with the existing safety limit minimum critical power ratio value is maintained. This ensures that the consequences of previously evaluated accidents are not significantly increased.

The proposed revision of the safety limit minimum critical power ratio does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident. The change does not affect the design, materials, or construction standards applicable to the fuel bundles in a manner that could change the probability of an accident.

Proposed Change 2:

The standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system. The standby liquid control system must be capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. Technical Specification Figure 3.1.5-1 specifies the acceptable range of concentrations and volumes for sodium pentaborate solution used as a neutron absorber (i.e., for reactivity control). The portion of the sodium pentaborate concentration range shown in Technical Specification Figure 3.1.5-1 applicable to the lower range of tank volumes is being revised to increase the required concentration of sodium pentaborate solution. This change is needed to account for the additional shutdown reactivity needed based on the planned use of GE13 fuel assemblies as reload fuel for the Unit 1 reactor core. Since the standby liquid control system is independent from the normal means of controlling reactor core reactivity and not used to control core reactivity during normal plant operations, the proposed revision to the sodium pentaborate concentration curve for the standby liquid control system does not alter any plant safety-related equipment, safety function, or plant operations that could change the probability of an accident.

The current volume-concentration range of sodium pentaborate used in the standby liquid control system will achieve a sufficient concentration of boron in the reactor vessel to ensure reactor shutdown. Based on the increased reactivity of the new GE13 reload fuel assemblies, the required sodium pentaborate volume-concentration range is being revised to ensure sufficient neutron absorbing solution is available to achieve reactor shutdown; therefore, the consequences of an accident previously evaluated are not significantly increased.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 1:

The GE13 fuel assembly has been designed and complies with the acceptance criteria contained in General Electric Nuclear Energy's standard application for reactor fuel (GESTAR-II), which provides the latest acceptance criteria for new General Electric fuel designs. The similarity of the GE13 fuel design to the previously accepted GE11 fuel design, in conjunction with the increased critical power capability of the GE13 fuel design, ensure that no new mode or condition of plant operation is being authorized by the loading and use of the GE13 fuel type. The proposed revision of the safety limit minimum critical power ratio from 1.07 to 1.10 does not modify any plant controls or equipment that will change the plant's responses to any accident or transient as given in any current analysis. Therefore, the proposed change to allow the loading and use of the GE13 fuel type and the revision of the safety limit minimum critical power ratio value from 1.07 to 1.10 will not create the possibility for a new or different kind of accident from any accident previously evaluated.

Proposed Change 2:

As discussed above, the standby liquid control system provides a means of reactivity control that is independent of the normal reactivity control system and is capable of assuring that the reactor core can be placed in a subcritical condition at any time during reactor core life. The proposed revision to the sodium pentaborate concentration range does not modify the standby liquid control system or its controls, does not modify other plant systems and equipment, and does not permit a new or different mode of plant operation. As such, the proposed revision to the minimum pentaborate concentration value does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

Proposed Change 1:

As previously discussed, the GE13 fuel assembly design has been analyzed using methods that have been previously approved by the Nuclear Regulatory Commission and documented in General Electric Nuclear Energy's reload licensing methodology Topical Report NEDE-24011, ''General Electric Standard Application for Reactor Fuel (GESTAR II).''The safety limit minimum critical power ratio value is selected to maintain the fuel cladding integrity safety limit (i.e., that 99.9 percent of all fuel rods in the core are expected to avoid boiling transition during operational transients). Appropriate operating limit minimum critical power ratio values are established, based on the safety limit minimum critical power ratio value, to ensure that the fuel cladding integrity safety limit is maintained. The operating limit minimum critical power ratio values are incorporated in the Core Operating limits Report as required by Technical Specification 6.9.3.1.

Based on the cycle-specific calculation performed by General Electric, a safety limit minimum critical power ratio value of 1.10 has been established for the GE13 fuel type for Unit 1 Cycle 11 operation. This cycle-specific calculation has been performed based on the methodology contained in Revision 12 of NEDE-24011-P-A. The new GE13 safety limit minimum critical power ratio value of 1.10 for Unit 1 Cycle 11 operation is based on the same fuel cladding integrity safety limit criteria as that for the GE11 safety limit minimum critical power ratio (i.e., that 99.9 percent of all fuel rods in the core are expected to avoid boiling transition during operational transients); therefore, the proposed change does not result in a significant reduction in the margin of safety.

Proposed Change 2:

As previously stated, the purpose of the standby liquid control is to inject a neutron absorbing solution into the reactor in the event that a sufficient number of control rods cannot be inserted to maintain subcriticality. Sufficient solution is to be injected such that the reactor will be brought from maximum rated power conditions to subcritical over the entire reactor temperature range from maximum operating to cold shutdown conditions. General Electric methodology establishes a fuel type dependent standby liquid control system shutdown margin to account for calculational uncertainties. General Electric calculations show that an in-vessel concentration of 660 ppm will provide a standby liquid control system minimum shutdown margin in excess of the 3.2% delta k value required for the GE13 fuel. To achieve an in-vessel concentration of 660 ppm, the acceptable range of standby liquid control system tank concentrations is being

revised for the lower range of tank volumes. Thus, the proposed revision of the standby liquid control system sodium pentaborate volume-concentration range ensures that there will not be a significant reduction in the amount of available shutdown margin and, therefore, not a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 21, 1996

Description of amendment request: The proposed amendments would extend the surveillance interval for TS 4.7.2.b and 4.7.2.d related to testing of the Control Room Emergency Filtration System from 18 months to 24 months. The amendments would also include a one-time extension of the allowed outage time for the Control Room and Auxiliary Electric Equipment Room Emergency Filtration System to allow each subsystem to be inoperable for up to 30 days during modifications to replace the existing deep bed charcoal absorbers with tray-type units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

This Technical Specification change does not involve accident initiators or initial accident assumptions. The Control Room and Auxiliary Equipment Room Emergency Filtration System (CREFS) trains A and B are post-accident atmospheric cleanup components that are designed to limit the radiation exposure to personnel occupying the Control Room to 5 rem or less whole body during and following all design basis accident conditions. Therefore, this Technical Specification change does not increase the probability of occurrence of an accident previously evaluated.

CREFS trains A and B are utilized to control the onsite dose to personnel in the Control Room. This Technical Specification change extends the [Limiting Condition for Operation] LCO duration for allowing each train to be inoperable one at a time from 7 days to 30 days total for the current surveillance interval. This change is a one time change to allow for the repair/replacement work associated with the corroded filter unit charcoal retaining screens in the high efficiency charcoal adsorber section of each train. The...normal preventative maintenance and testing [will] be performed on the operable CREFS train just prior to taking the [opposite] filter train out of service for the modification. This action will ensure that the remaining subsystem is operable and ensure maximum reliability of the system. The Technical Specification change will not affect onsite dose if a [design-basis accident] DBA occurs and the operating filter unit does not fail. The operable filter unit will be sufficient to maintain the operating areas habitable. The original LCO allowed 7 day operation with only one operable train and is also susceptible to a single failure during the Allowed Outage Time. The probability that a DBA will occur coupled with the single failure of the operable train during the extended allowed outage time per the Technical Specification change is the same order of magnitude as for the current 7 day allowed outage time. Therefore, this change does not increase the consequences of an accident previously evaluated.

The extension of the surveillance interval from 18 months to 24 months extends the maximum interval between TS surveillances of the filter trains from 22.5 months to 30 months. The equipment that is affected are the CREFS filter trains A and B, which are comprised of HEPA filters, heaters, charcoal adsorbers, and fans. This equipment has a history of satisfactory surveillance testing (in-place testing and laboratory analysis of charcoal), and has had little maintenance problems for the past 5 years. Although the SER Section 6.4.1 and the [Regulatory Guide] RG 1.52 state that the units shall be tested every 18 months, a review of the basis documents for the testing (ANSI N510) shows that the 1975 edition recommended annual testing and later editions (1980 and 1989) state that testing be performed ''at least once every operating cycle''. Therefore the extension of the surveillance intervals from 18 months to 24 months will not increase the consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This Technical Specification change will allow each train of CREFS to be inoperable one at a time for up to 30 days to repair/replace charcoal retaining screens and changes surveillance intervals from 18 months to 24 months. Prior to the extended LCO on a given train, the scheduled monthly surveillance and preventive maintenance will be performed. This Technical Specification change does not involve components that are accident initiators and therefore will not create a new or different kind of accident than those previously analyzed.

3) Involve a significant reduction in the margin of safety because:

The purpose of CREFS trains A and B are to control the onsite dose to personnel in the Control Room following an accident that involves a potential radiological release. Redundant filter trains are utilized to ensure that a single active failure will not impact the ability of the system to perform its safety function. Since the probability of an accident occurring during the extended Technical Specification LCO for the inoperable train in conjunction with the probability that the operable CREFS train will fail is the same order of magnitude as for the current LCO, then the proposed Technical Specification change has minimal impact on the safe operation of the plant. The CREFS trains were both determined operable following their last surveillance and no events have occurred at the plant to indicate that they may be inoperable. Normal preventative maintenance and testing will be performed on the operable CREFS train just prior to taking the [opposite] filter train out of service for the modification. This action will ensure that the remaining subsystem is operable and ensure maximum reliability of the system. The change in surveillance intervals from 18 months to 24 months will not cause a significant reduction in the margin of safety, because the previous five surveillances have been satisfactory and the equipment/components do not have a tendency to drift over time. Therefore, the proposed amendment will not significantly impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Dairyland Power Cooperative (DPC), Docket No. 50-409, LaCrosse Boiling Water Reactor (LACBWR), Vernon County, Wisconsin

Date of amendment request: April 10, 1996

Description of amendment request: The proposed amendment would update the facility Possession Only License and Technical Specifications to reflect the permanently shutdown and defueled condition of the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

DPC proposes to modify the LACBWR Technical Specifications to more accurately reflect the permanently shutdown, defueled, possession-only status of the facility.

Analysis of no significant hazards consideration:

1. The proposed changes do not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes delete system requirements that are no longer necessary to prevent, or mitigate the consequences of, a credible SAFSTOR accident as described in our current SAFSTOR Accident Analysis.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are either administrative in nature or were made based on the analysis of previously evaluated accident scenarios. In no other way do they change the design or operation of the facility and therefore do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The changes incorporate into the proposed Technical Specifications the margin of safety associated with the current SAFSTOR accident analysis and thus don't involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Wheeler, Van Sickle and Anderson, Suite 801, 25 West Main Street, Madison, Wisconsin 53703-3398

NRC Project Director: Seymour H. Weiss

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 25, 1996 (NRC-96-0064)

Description of amendment request: The proposed amendment would relocate or delete a number of items currently in the Administrative Controls Section (Section 6.0) of the technical specifications (TS). This submittal revises a previous submittal dated December 15, 1994 (NRC-94-0107), to modify the proposed TS change to be consistent with NRC Administrative Letter 95-06, ''Relocation of Technical Specifications Administrative Controls Related to Quality Assurance,'' the Improved Standard TS (ISTS), and pending changes to the ISTS. The previous submittal was noticed in the Federal Register on June 6, 1995 (60 FR 29873).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected by any of the proposed changes.

Also, these proposed changes, in themselves, do not reduce the level of qualification or training such that personnel requirements would be decreased. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the proposed changes do not alter the design, function, or operation of any plant component and therefore, do not affect the consequences of any previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new mode of plant operation, surveillance requirement or involve a physical modification to the plant. The proposed changes are administrative in nature. The changes propose to revise, delete or relocate the stated administrative control provisions from the TS to the UFSAR, plant procedures or the QA [Quality Assurance] Program whereby, adequate control of information is maintained. Further, as stated above, the proposed changes do not alter the design, function, or operation of any plant components and therefore, no new accident scenarios are created.

3. The proposed changes do not involve a significant reduction in a margin of safety because they are administrative in nature. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Limiting Condition for Operation, ACTION statement or Surveillance Requirement is affected. The proposed changes do not involve a significant reduction in a margin of safety. Additionally, the proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: Mark Reinhart

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 29, 1996

Description of amendment request: The proposed amendment revises the permissible values of the maximum and minimum pressurizer water levels and incorporates a graph to display these values for various operating conditions. The amendment also revises the Bases section of the Technical Specification. The Bases changes revise the acceptable value of the as-found tolerance for the settings of the pressurizer safety valves and change the value of flowrate through the pressurizer safety valves. The moderator temperature coefficient as described in the Bases Section is removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The startup accident and the rod withdrawal accident have been reanalyzed to justify the proposed increase in pressurizer coder safety value as-found tolerance. The analyses establish more appropriate boundaries and re-analyze the same initiators as are currently found in the ANO-1 Safety Analysis Report. Changing the as-found setpoint tolerance does not change how the pressurizer code safety valve operates as it will continue to be reset to 2500 psig plus or minus 1% prior to reactor startup.

The acceptance criteria for these analyses are that the reactor coolant system (RCS)

pressure shall not exceed the safety limit of 2750 psig (110% of design pressure and that the reactor thermal power remains below 112% Rated Power. The analyses using the proposed setpoint tolerance have shown that the acceptance criteria were met and that the consequences of the events were essentially the same as those in the ANO-1 SAR. Analyses were performed to determine the pressurizer maximum water level that would prevent the RCS from exceeding the safety limit of 2750 psig in the event of either a startup accident or a rod withdrawal accident. More appropriate pressurizer level requirements have been incorporated in accordance with these analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes introduce no new mode of plant operation. The reanalysis of the startup accident and the rod withdrawal accident were performed using methodologies identical to that employed in the ANO-1 SAR and an improved computer code (RELAP5/MOD2). The pressurizer code safety valve setpoint will continue to be reset at 2500 psig plus or minus 1% prior to reactor startup and will continue to function to maintain RCS pressure below the safety limit of 2750 psig. Analyses were performed to determine the pressurizer maximum water level that would prevent the RCS from exceeding the safety limit of 2750 psig in the event of either a startup accident or a rod withdrawal accident. More appropriate pressurizer level requirements have been incorporated in accordance with these analyses.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The safety function of the pressurizer code safety valves is not altered as a result of the proposed change in setpoint tolerance. The reanalysis of the startup accident and rod withdrawal accident have shown that with a plus or minus 3% setpoint tolerance, the pressurizer code safety valves will function to limit RCS pressure below the safety limit of 2750 psig. The sensitivity studies for the startup accident showed the acceptance criteria would still be met even if one pressurizer code safety valve lifted at 5% above 2500 psig at startup conditions. Additional analyses were performed to determine the pressurizer maximum water level that would prevent the RCS from exceeding the safety limit of 2750 psig in the event of either a startup accident or a rod withdrawal accident.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: June 28, 1996

Description of amendment request: The proposed amendments would remove the Unit 1 and Unit 2 Technical Specification requirements to secure the containment equipment hatch during core alterations or fuel handling.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change would allow the containment equipment hatch door to remain open during fuel movement and core alterations. This door is normally closed during this time period in order to prevent the escape of radioactive material in the event of a fuel handling accident. This door is not an initiator of any accident. The probability of a fuel handling accident is unaffected by the position of the containment equipment hatch door. The current fuel handling analysis, which has been approved by the Staff for ANO-2 and submitted for ANO-1, calculates maximum offsite doses to be well within the limits of 10 CFR Part 100. The current fuel handling accident analysis results in maximum offsite doses of 63.6 and 41.8 Rem to the Thyroid and 0.902 and 0.598 Rem to the whole body (sum of beta and gamma) for ANO-1 and ANO-2, respectively. This analysis assumes the entire release from the damaged fuel is allowed to migrate to the site boundary unobstructed. Therefore, allowing the equipment hatch doors to remain open results in no change in consequences. Also, the calculated doses during a fuel handling accident would be considerably larger than the actual doses since the calculation does not incorporate the closing of the equipment hatch door following evacuation of containment. The proposed change would significantly reduce the dose to workers in the containment in the event of a fuel handling accident by expediting the containment evacuation process. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design, configuration, or method of operation of the plant beyond the standard functional capabilities of the equipment. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not have the potential for an increased dose at the site boundary due to a fuel handling accident. The margin of safety as defined by 10 CFR Part 100 has not been significantly reduced. Closing the equipment hatch door following an evacuation of containment further reduces the offsite doses in the event of a fuel handling accident and provides additional margin to the calculated offsite doses. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: July 12, 1996

Description of amendment request: The proposed amendment would change Technical Specification (TS) Sections 6.2.2.h and 6.2.2.i. To provide adequate shift coverage without routine heavy use of overtime, TS Section 6.2.2.h specifies an objective to have operating personnel work ''a normal 8-hour day, 40-hour week'' while the facility is operating. The proposed amendment would change the objective to ''an 8 to 12 hour day, nominal 40-hour week.''

TS Section 6.2.2.i currently states, ''The General Supervisor Operations, Supervisor Operations, Station Shift Supervisor Nuclear, and Assistant Station Shift Supervisor Nuclear shall hold senior reactor operator licenses.'' The proposed amendment would change this section to state, ''The

Manager Operations, Station Shift Supervisor Nuclear and Assistant Station Shift Supervisor Nuclear shall hold senior reactor operator licenses.'' This change is based upon a reorganization that eliminates the positions of General Supervisor Operations and Supervisor Operations from the Unit 1 Operations management structure. The responsibilities of these positions will be assumed by the Manager Operations or delegated to off-shift Senior Reactor Operators. Thus, Senior Reactor Operators will report directly to the Manager Operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Establishing operating personnel work hours at, ''an 8 to 12 hour day, nominal 40-hour week,'' provides enhanced continuity for normal plant operations. There has been no noticeable increase in safety related problems during the trial period [The facility has been implementing 12-hour operator shifts for over 1 year on a trial basis]. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement of working hours (Generic Letter 82-12). The probability for operating personnel error due to (1) incomplete or insufficient turnover or (2) interruption of in-plant maintenance and testing is reduced. No physical plant modifications are involved, and none of the precursors of previously evaluated accidents are affected. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The assimilation of the responsibilities of the previous positions of General Supervisor Operations and Supervisor Operations into the position of Manager Operations and to off-shift Senior Reactor Operators reflects a restructuring of the operations department, and is essentially a reduction in layers of management. This proposed change does not involve any physical modification to the plant, and does not affect any precursor of a previously evaluated accident. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Establishing operating personnel hours at ''an 8 to 12-hour day, nominal 40-hour week'' provides increased flexibility in scheduling and does not adversely affect their performance. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12). No physical modification of the plant is involved. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The responsibilities of the previous positions of General Supervisor Operations and Supervisor Operations will be assimilated into the positions of the Manager Operations and the off-shift Senior Reactor Operators. There is no physical plant modification. The change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, the change does not in itself create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Establishing operating personnel hours at ''an 8 to 12-hour day, nominal 40-hour week,'' provides increased flexibility in scheduling and does not adversely affect their performance. This change also decreases the risk of miscommunication between shifts by reducing the number of turnovers per day and increases operations and maintenance efficiency by promoting continuity in ongoing plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12) and is consistent with the Improved Standard Technical Specifications. The proposed change involves no physical modification of the plant, or alterations to any accident or transient analysis [...], and the changes are administrative in nature. Therefore, the change does not involve any significant reduction in a margin of safety.

The assimilation of the responsibilities of the positions of General Supervisor Operations and Supervisor Operations, into the positions of the Manager Operations and the off-shift Senior Reactor Operators, effectively reduces layers of management. The proposed change is consistent with Standard Review Plan (SRP) 13.1.2-13.1.3. This administrative transformation of the operations department management structure involves no physical modification of the plant or alterations to any accident or transient analysis. Therefore, this change in itself does not involve any significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: July 12, 1996

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 6.2.2.i. To provide adequate shift coverage without routine heavy use of overtime, TS Section 6.2.2.i specifies an objective to have operating personnel work ''a normal 8-hour day, 40-hour week'' while the facility is operating. The proposed amendment would change the objective to ''an 8 to 12 hour day, nominal 40-hour week.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Establishing operating personnel work hours at, ''an 8 to 12 hour day, nominal 40-hour week,'' allows normal plant operations to be managed more effectively and with enhanced continuity. There has been no noticeable increase in safety related problems during the trial period [The facility has been implementing 12-hour operator shifts for over 1 year on a trial basis]. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12). The probability for operating personnel error due to (1) incomplete or insufficient turnover or (2) interruption of in-plant maintenance and testing is reduced. No physical plant modifications are involved, and none of the precursors of previously evaluated accidents are affected. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Establishing operating personnel hours at, ''an 8 to 12-hour day, nominal 40-hour week,'' improves the quality of life for operating personnel and does not adversely affect their performance. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12). No physical modification of the plant is

involved. As such, the change does not introduce any new failure modes or conditions that may create a new or different accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Establishing operating personnel hours at, ''an 8 to 12-hour day, nominal 40-hour week,'' improves the quality of life for operating personnel and does not adversely affect their performance. This change also decreases the risk of miscommunication between shifts and increases operations and maintenance efficiency by promoting continuity in ongoing plant activities. Overtime remains controlled by site administrative procedures in accordance with the NRC Policy Statement on working hours (Generic Letter 82-12) and is consistent with the Improved Standard Technical Specifications. The proposed change involves no physical modification of the plant, or alterations to any accident or transient analysis [...], and the changes are administrative in nature. Therefore, the change does not involve any significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: February 2, 1996

Description of amendment request: This request would change Technical Specification (TS) 3.6.1.2 for each unit to permit primary containment leakage testing of the main steam isolation valves (MSIVs) at either 22.5 psig or 45 psig according to the type of test to be conducted. Currently the TS only specifies 22.5 psig for the MSIVs' test pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the allowable test pressure for MSIV leak testing was reviewed from two perspectives. First is the potential for the change in testing pressure, and test methodology, to impact testing results. The second perspective is the potential for a failure of the testing configuration to result in undesirable consequences.

Under the proposed change, an increased test pressure of 45.0 psig (P_a) in the accident direction will be used to perform Technical Specification required MSIV leak testing. However, the acceptance criteria for testing is maintained consistent with current Technical Specifications. Therefore, the proposed change to allow a test pressure of P_a will not affect the validity of leak test results. The existing Technical Specification required leak integrity of the MSIVs will be maintained under the proposed test methodology and thus the ability of the MSIVs to act as a containment isolation valves is not affected.

The proposed test pressure of P_a will be applied in the accident direction, and will result in a back pressure being applied to the Main Steam Line (MSL) Plugs. The potential for MSL Plug ejection has been reviewed and adequate precautions have been taken to ensure that fuel damage would not result from [local leak rate test] LLRT induced MSL Plug ejection. The MSL Plugs are installed using a restraint ring which prevents inadvertent ejection. [Pennsylvania Power and Light Company] PP&L procedures require that the restraint ring be installed as a prerequisite for LLRT testing of the MSIVs at P_a. However, in the unlikely event that the MSL Plug and restraint ring were installed improperly and then subjected to back pressurization at P_a, ejection could occur. If this event did occur, the MSL Plug could hit the fuel which is an accident bounded by the fuel assembly handling accident analysis addressed in [Final Safety Analysis Report] FSAR Section 15.7.4. The MSL Plugs, MSL Plug Restraint Ring, and MSL Plug Insert and Remove Tool meet the requirements of NUREG 0612 and PP&L's Heavy Loads Program.

Therefore, the proposal to allow an alternative test pressure, P_a, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

All components within the test volume have been evaluated for structural integrity under the proposed test pressures. In addition, pressurization of the Main Steam Line Plugs during testing will be below the evaluated pressure. The acceptance criteria for the test will be maintained, thus verification of the leak integrity of the MSIVs will not be impacted. Therefore, the proposed change to allow for an alternative test pressure of (P_a) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for the MSIV LLRT. As a result, testing at P_a in the accident direction will provide an equivalent test to that which is performed at P_a. No change in the leak integrity of the MSIVs is anticipated as a result of performing the testing at the alternative pressure. The potential for MSL Plug ejection during MSIV LLRT at P_a has been evaluated and found to be bounded by existing accident analysis. Therefore the proposed change to allow an alternative test pressure, P_a, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: July 12, 1996

Description of amendment request: The proposed amendment would revise the Indian Point 3 (IP3) Technical Specifications (TSs) by changing the surveillance frequency requirements in Table 4.1-1, ''Minimum Frequencies for Checks, Calibrations, and Tests of Instrument Channels'' to accommodate a 24-month operating cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequence of any accident previously evaluated. The proposed changes are being made to extend surveillance frequencies from 18 months to 24 months for:

Vapor Containment High Radiation Monitors

Reactor Coolant System Subcooling Margin Monitor (SMM),

Overpressure Protection System (OPS), and

Reactor Vessel Level Indication System (RVLIS).

These proposed changes are being made using the guidance provided by Generic Letter 91-04 to accommodate a 24-month fuel cycle. The containment radiation monitors, SMM, and RVLIS are used to provide operator information during post-accident conditions and have no effect on event initiators associated with previously analyzed accidents. The OPS is used only when the plant is shutdown, with RCS [reactor coolant system] temperature below a low temperature limit, and the RCS is not vented. The function of the OPS is to protect the RCS from Low Temperature Overpressurization (LTOP) transients and has no effect on accident initiators. No credit is taken in the IP3 safety analyses for accident mitigation effects that might result from use of these instrument channels. Updated calculations and evaluations to assess the proposed increase in the surveillance intervals demonstrate that the effectiveness of these instrument channels in fulfilling their respective functions is not reduced. The containment high radiation monitors are used for post accident monitoring purposes to provide operators with an indication of adverse conditions in containment based on releases of radioactivity from the RCS to the containment atmosphere. These monitors provide no signals to plant control systems or automatic safety systems used for accident mitigation and have no role as an accident initiator.

Use of the subcooling margin monitor and core exit thermocouples by plant operators is specified in the Indian Point 3 Emergency Operating Procedures (EOPs) to assess post accident cooling conditions in the RCS. Changes to the EOPs will be made to reflect the results of the updated loop accuracy calculations for this instrumentation. These changes will ensure that safety analysis input assumptions associated with subcooling margin, for small break LOCA [loss-of-coolant accident], steam generator tube rupture, and steamline break, remain valid, and that the response strategies outlined in the Westinghouse Owners Group Emergency Response Guidelines are maintained. Core exit thermocouple readings are not used for input to plant safety analyses.

The OPS provides a protective function to prevent RCS pressure limits from being exceeded while the plant is shutdown and the RCS is being maintained at a low temperature and not vented. Failure of the OPS is not assumed to be an accident initiator in the plant safety analyses.

The change to the RVLIS calibration interval does not affect design or operation of plant systems and will not affect the probability of accidents. Revised loop accuracy calculations have demonstrated that operator actions for responding to postulated accidents using RVLIS in conjunction with the Indian Point 3 EOPs will remain consistent with the accuracy requirements RVLIS. The consequences of a previously evaluated accident will not be affected.

Equipment and system design requirements and safety analysis acceptance criteria continue to be met with the proposed new surveillance intervals. Based on the above information it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes to extend the surveillance frequencies for the above listed instrument channel do not create the possibility of a new or different kind of accident from any previously evaluated. The increased surveillance frequencies were evaluated based on past equipment performance and do not require any plant hardware changes or changes in system operation. There are no new failure modes introduced as a result of extending these surveillance intervals, which could lead to the creation of new or different kinds of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. [A decreased] surveillance frequency for the Containment High Radiation Monitor, SMM, OPS, and RVLIS does not adversely affect the performance of safety-related systems, equipment, or instruments and does not result in increased severity of accidents evaluated. The radiation monitor, SMM, and RVLIS are not used to support margins of safety identified in the Technical Specifications. OPS provides an equipment protection function to prevent inadvertent overpressurization of the RCS at shutdown conditions. The Low Temperature Overpressurization (LTOP) curve in the Technical Specifications represents material stress limits based on fracture toughness requirements for ferritic steel. Analysis of the proposed change to the OPS surveillance frequency verified sufficient margin to the LTOP curve and therefore does not involve a significant reduction in margin to the material stress limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Jocelyn A. Mitchell, Acting Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: July 12, 1996

Description of amendment request: The proposed amendment would change the Indian Point 3 (IP3) Technical Specifications (TS) relating to minimum reactor coolant system (RCS) flow and maximum RCS average temperature to make these parameters consistent with an assumption of 100% helium release from the boron coating of the integral fuel burnable absorber (IFBA) rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

The proposed changes to the RCS minimum flow and maximum T^{avg} requirements will not increase the probability or consequences of an accident previously evaluated. Reference 2 [SECL-96-046, ''IFBA Helium Release Evaluation for Cycle 9 Restart,'' Westinghouse Electric Corporation, dated July 8, 1996] states that, for the remainder of Cycle 9, all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the Technical Specification Bases is not reduced in any of the licensing basis accident analyses for the assumption of a 100% helium release from the IFBA rods. Reference 3 [Westinghouse letter, ''Technical Specification Value for T-Average,'' INT-96-557, dated July 3, 1996] states that a reduction of maximum allowable indicated T_{avg} from 578.3°F to 571.5°F specifications consistent with the more limiting containment integrity analyses. The associated plant and technical specification changes do not affect any of the mechanisms postulated in the FSAR [Final Safety Analysis Report] to cause licensing basis events. Therefore, the probability of an accident previously evaluated has not increased. Because design limitations continue to be met, and the integrity of the RCS pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Therefore, the consequences of an accident previously evaluated will not be increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes to the RCS minimum flow and maximum T_{avg} requirements do not create the possibility of a new or different kind of accident from any previously evaluated. Reference 2 states that, for the remainder of Cycle 9, all pertinent

licensing basis acceptance criteria have been met, and the margin of safety as defined in the Technical Specification Bases is not reduced in any of the licensing basis accident analyses for the assumption of a 100% helium release from the IFBA. Reference 3 provides clarifications of the assumptions made in the design basis and restricts DNB temperature limits to be consistent with non-DNB analyses. The associated plant and technical specification changes do not change the plant configuration in a way which introduces a new potential hazard to the plant (i.e., no new failure mode has been created). Therefore, an accident which is different than any previously evaluated will not be created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes to the RCS minimum flow and maximum T_{avg} requirements do not involve a significant reduction in a margin of safety. Reference 2 demonstrates that, for the remainder of Cycle 9, all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the Technical Specification Bases is not reduced in any of the licensing basis accident analyses for the assumption of a 100% helium release from the IFBA. Reference 3 maintains the margin of safety by restricting a DNB limit to bound other analyses. Since References 2 and 3 demonstrate that all applicable acceptance criteria continue to be met, the subject operating conditions will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Jocelyn A. Mitchell, Acting

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: May 3, 1996 (TS 352)

Description of amendment request: The proposed amendment requests administrative changes to the Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 technical specifications. The proposed amendment consists of three parts, designated by the licensee as A, B, and C. Part A deletes technical specification requirements associated with BFN Unit 2 Amendment 219, issued November 12, 1993, to permit modification of reactor vessel water level instrumentation requested by NRC Bulletin 93-03. Part B deletes technical specification requirements associated with Amendment 228, issued on December 7, 1994, which provided a temporary change to permit upgrade of electrical equipment. The modifications associated with Parts A and C are complete. Part C provides other administrative changes to clarify requirements and to implement rule changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Part A: The proposed Technical Specification change to remove the temporary revisions, which were in place to modify the reactor vessel water level instrumentation requested by NRC Bulletin 93-03, is administrative. The temporary limiting condition for the minimum number of trip systems operable will no longer be accurate and the minimum number operable per trip system will be the same as they were prior to November 12, 1993. Therefore, the proposed changes will not significantly increase the consequences of an accident previously evaluated.

Part B: The proposed Technical Specification change to remove the temporary revisions, which were in place to replace the 250 volt shutdown board batteries is administrative. The LCO to extend the allowed outage time (AOT) from a five-day to a 45-day AOT will no longer be accurate and the five day AOT will be the same as it was prior to Unit 2, Cycle 7. Therefore, the proposed changes will not significantly increase the consequences of an accident previously evaluated.

Part C: The proposed Technical Specifications change revises items 1 through 5 above (Section I, Description of the Proposed Change, Part C), and is administrative. TVA has evaluated the proposed technical specification changes and has determined that the proposed changes are administrative in nature. Further, it provides a revision based on an NRC Code of Federal Regulations rule change. Also, the proposed changes provide correction of administrative errors from previous technical specifications. For example, the Main Steamline High Radiation remarks in Table 3.2.A, 1.b., should have been deleted from the TS as part of TS-322. It also clarifies some requirements to ensure consistent application throughout the specifications. These changes do not affect any of the design basis accidents. They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Part A: The proposed Technical Specification change to remove the temporary revisions, which were in place to modify the reactor vessel water level instrumentation requested by NRC Bulletin 93-03, is administrative. The temporary limiting condition for the minimum number of trip systems operable will no longer be accurate and the minimum number operable per trip system will be the same as they were prior to November 12, 1993. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

Part B: The proposed Technical Specification change to remove the temporary revisions, which were in place to replace the 250 volt shutdown board batteries is administrative. The LCO to extend the allowed outage time (AOT) from a five day to a 45-day AOT will no longer be accurate and the five day AOT will be the same as it was prior to Unit 2, Cycle 7. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

Part C: The proposed Technical Specifications change revises items 1 through 5 above (Section I, Description of the Proposed Change, Part C), and is administrative. TVA has evaluated the proposed changes and has determined that they are administrative in nature. Further, it provides revisions based on an NRC Code of Federal Regulations rule change. It also provides correction of administrative errors in previous technical specification changes. For example, the Main Steamline High Radiation remarks in Table 3.2.A, 1.b., should have been deleted from the TS as part of TS-322. It also clarifies some requirements to ensure consistent application throughout the specifications. These changes do not affect any of the design basis accidents. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature for Parts A, B, and C. The proposed change includes the deletion of temporary changes as a result of modifications to systems and clarification of some requirements to ensure consistent application throughout the specifications. Further, the proposed change corrects errors in previous TS submittals. No safety margins are affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street,Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Local Public Document Room location: Athens Public Library, South Street,Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: June 21, 1996 (TS 377)

Description of amendment request: The proposed amendment provides a new minimum critical power ratio safety limit to replace the current non-conservative value. The amendment also updates the technical specification bases to clarify the usage of the residual heat removal supplemental spent fuel pool cooling mode.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in the Safety Limit Minimum Critical Power Ratio (SLMCPR) does not increase the frequency of the precursors to design basis events or operational transients analyzed in the Browns Ferry Final Safety Analysis Report. Therefore, the probability of an accident previously evaluated is not significantly increased.

The proposed change in the SLMCPR ensures that 99.9 percent of the fuel rods in the core are expected to avoid boiling transition during the most limiting anticipated operational occurrence, which is the design and licensing basis for the analysis of accidents and transients described in the Browns Ferry Updated Final Safety Analysis Report (UFSAR). It does not change the nuclear safety characteristics of any safety system or containment system. Therefore, the consequences of an accident, operator error, or malfunction of equipment important to safety previously evaluated in the UFSAR has not been increased.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specification requirements for the safety limit minimum critical power ratio does not involve a modification to plant equipment. No new failure modes are introduced. There is no effect on the function of any plant system and no new system interactions are introduced by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will ensure that during any anticipated operational transient, at least 99.9% of the fuel rods would be expected to avoid boiling transition which is consistent with the licensing basis. Since the margin [of] safety is being increased with this change, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: July 18, 1996

Description of amendment request: The amendment adopts ASTM D-3803-1989 as the laboratory testing standard for charcoal samples from the charcoal adsorbers in the auxiliary/fuel building emergency exhaust system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested change to the charcoal sample surveillance acceptance criteria for the fuel building and auxiliary building emergency exhaust system will not affect the method of operation of the system. The testing of the charcoal filter samples will continue to be performed in accordance with NRC-accepted methods and acceptance criteria, and the new test protocol will still ensure filter efficiency is maintained equal to or greater than 90%. There are no changes to the emergency exhaust system and it will continue to function in a manner consistent with the safety analysis assumptions and the plant design basis. There will be no degradation in the performance of or an increase in the number of challenges to equipment assumed to function during an accident. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the surveillance requirements are being made to adopt current NRC-accepted methods of testing charcoal samples. These changes will not affect the method of operation of the applicable systems and the laboratory testing will continue to demonstrate the required adsorber performance after a design-basis LOCA [loss-of-coolant accident] or fuel handling accident. No new or different kind of accident from any previously evaluated will be created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The new charcoal adsorber sample laboratory testing protocol is more stringent than the current testing practice and meets current NRC-approved test methods. The new testing criteria will continue to demonstrate the required adsorber performance after a design-basis LOCA or fuel handling accident and will not affect the filter system performance. Therefore, this change will not reduce the margin of safety of the emergency exhaust system filter operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 18, 1996

Description of amendment request: The proposed amendment would revise

Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.8, ''Refueling Operations,'' and its associated Basis, by allowing the containment personnel air lock doors to remain open during refueling operations as long as at least one door is capable of being closed in 30 minutes or less.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to determine that no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Maintaining the doors of the personnel air lock open during REFUELING OPERATIONS does not adversely affect the probability or consequences of accidents previously evaluated. The only applicable accident is a fuel handling accident described in [Updated Safety Analysis Report] USAR Section 14.2.1. The fuel handling accident evaluated in the USAR Section 14.2.1 assumes the accident to be in the spent fuel pool in the Auxiliary Building. The accident assumes a sudden release of the gaseous fission products held in the voids between the pellets and cladding of all of the rods in the highest rated fuel assembly at 100 hours following reactor shutdown. The accident activity is assumed to discharge from the spent fuel pool directly to the atmosphere at ground level. No credit is taken for existing building structures, ventilation, or filtration systems. A fuel handling accident in containment is bounded by this evaluation. Furthermore, any release from a fuel handling accident in containment can still be terminated by closing one of the personnel air lock doors following containment evacuation.

The containment personnel air lock doors are components integral to the containment structure. They are not accident initiators. Therefore, the proposed amendment does not increase the probability of any previously evaluated accident.

The control room operator immersion and inhalation doses were reviewed as part of the updated Control Habitability Evaluation Report. The report states that thyroid and whole body doses received by control room operators in each of the other design basis accidents discussed in KNPP USAR Section 14.2 are less than the [loss of coolant accident] LOCA dose. This amendment does not change the results of the Control Room Habitability Evaluation Report, since the fuel handling accident evaluated in KNPP USAR Section 14.2.1 assumes a release directly to the atmosphere. This change does not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The accident evaluated in USAR section 14.2.1 bounds a fuel handling accident in containment with the personnel air lock doors open. The fuel handling accident evaluated in USAR section 14.2.1 assumes activity is discharged directly to the atmosphere at ground level. Since no credit is taken for building structures, ventilation systems or filtration systems, the position of the doors does not affect the analysis of record. Furthermore, one of the air lock doors can still be closed following containment evacuation to terminate the release.

The containment personnel air lock doors are components integral to the containment structure. They are not accident initiators. The proposed amendment does not create the possibility of any new or different kind of accident [from any accident] previously evaluated.

3. Involve a significant reduction in the margin of safety.

Maintaining the containment personnel air lock doors open during REFUELING OPERATIONS does not involve a significant reduction in the margin of safety. A fuel handling accident in containment is bounded by a fuel handling accident in the spent fuel pool. The spent fuel pool fuel handling accident is assumed to have a sudden release of the gaseous fission products held in the voids between the pellets and cladding of all of the rods in the highest rated fuel assembly, 100 hours following reactor shutdown. The accident activity leaving the spent fuel pool is assumed to discharge directly to the atmosphere at ground level. No credit is taken for existing building structures, ventilation, and filtration systems. Therefore, there is no reduction in the current margin of safety. Furthermore, the release caused by a fuel handling accident in containment can be terminated by closing one of the personnel air lock doors following containment evacuation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 12, 1996

Brief description of amendment request: The amendment would change Technical Specification 3.3.2.1, ''Engineered Safety Feature Actuation System Instrumentation,'' to reflect a revised setpoint for the interlock designated P-12.

Date of publication of individual notice in Federal Register: July 23, 1996 (61 FR 38229)

Expiration date of individual notice: August 22, 1996

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: January 29, 1996, as supplemented June 17, 1996.

Brief description of amendment: The amendment revises the technical specifications (TS) table 4.1-3, item 4 to change the frequency of main steam safety valve (MSSV) testing to that specified in NUREG-1431, the improved ''Standard Technical Specifications, Westinghouse Plants'' and adds the MSSV test acceptance requirements.

Date of issuance: August 1, 1996

Effective date: August 1, 1996

Amendment No.: 171

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7545). The June 17, 1996, submittal provided supplemental information that was not outside the scope of the February 28, 1996, notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 20, 1996

Brief description of amendment: To relocate Technical Specification 3.3.3.2, Movable Incore Detectors, to plant procedures.

Date of issuance: July 24, 1996

Effective date: July 24, 1996

Amendment No.: 65

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18164) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County and Northeast Nuclear Energy Company, et al., Docket Nos. 50-245, 50-336, and 50-423, Millstone Nuclear Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of application for amendments: November 22, 1995

Brief description of amendments: The amendments replace the title-specific designation of members representing specific functional areas on the Plant Operating Review Committee (PORC) for the Haddam Neck Plant and Millstone Units 1, 2, and 3 with a functional area-specific designation that stipulates membership qualification and experience requirements. The amendments also clarify the composition of the Site Operations Review Committee (SORC) at Millstone.

Date of issuance: July 16, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 190, 95, 200, 130

Facility Operating License Nos. DPR-61, DPR-21, DPR-65, AND NPF-49: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7549) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 16, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street Middletown, Connecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385, for Millstone 1, 2, and 3.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: January 26, 1996, as supplemented May 6, May 20, and June 5, 1996

Brief description of amendment: The amendment revises the Technical Specifications to permit a one-time operation of the containment purge ventilation system during Mode 3 and 4 after the steam generator replacement outage.

Date of issuance: July 30, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment No.: 150

Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18165) The supplemental submittals provided clarifying information that did not change the scope of the January 26, 1996, application for amendment nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 4, 1996

Brief description of amendments: The amendments delete Flow Monitoring System from Technical Specification 3.4.6.1 and associated surveillance requirements.

Date of issuance: July 29, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 168 and 150

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18166) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 4, 1996

Brief description of amendments: The amendments consist of changes to the Final Safety Analysis Report for McGuire Units 1 and 2 to delete the seismic qualification requirement for the Containment Atmosphere Particulate Radiation Monitors.

Date of issuance: July 30, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 169 and 151

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Final Safety Analysis Report.

Date of initial notice in Federal Register: May 8, 1996 (61 FR 20845) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 30, 1996, and an Environmental Assessment dated July 22, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 20, 1996

Brief description of amendment: The amendment revised the Facility Operating License and Appendix C to the license to reflect the name change from Gulf States Utilities Company to Entergy Gulf States, Inc.

Date of issuance: July 30, 1996

Effective date: July 30, 1996

Amendment No.: 88

Facility Operating License No. NPF-47: The amendment revised the operating license and Appendix C to the license.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31183) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1996. No significant hazards consideration comments received. No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 20, 1995, as supplemented by letter dated December 15, 1995

Brief description of amendment: The amendment revised and deleted surveillance requirements, notes, and action statements involved with the requirements for the drywell leak rate testing, and the air lock leakage and interlock testing in Subsections 3.6.5.1 (Drywell), 3.6.5.2 (Drywell Air Lock), and 3.6.5.3 (Drywell Isolation Valves) of the technical specifications.

Date of issuance: August 1, 1996

Effective date: August 1, 1996

Amendment No: 126

Facility Operating License No. NPF-29: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25704) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: March 21, 1996 as supplemented May 13, 1996.

Brief description of amendments: Relocate requirements for Radiological Effluent Controls from Technical Specifications (TS) to the Offsite Dose Calculation Manual or the Process Control Program. New programmatic controls for radioactive effluent and radiological environmental controls will be incorporated into the TS. Also, requirements for Gas Decay tanks and Explosive Gas Mixture will be placed in a different area of the TS.

Date of issuance: July 31, 1996

Effective date: July 31, 1996

Amendment Nos.: 188 and 182Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1966 (61 FR 31180) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 28, 1996

Brief description of amendments: Amendment changes Technical Specification 6.2.2.i, ''Administrative Controls,'' regarding Operations Manager qualifications.

Date of issuance: July 22, 1996

Effective date: July 22, 1996

Amendment Nos.: 187 and 181Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31181) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 22, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

GPU Nuclear Corporation and Saxton Nuclear Experimental (SNEC) Corporation, Docket No. 50-146, Saxton Nuclear Experimental Facility (SNEF)

Date of application for amendment: February 2, 1996, as supplemented on February 28, April 24, and May 24, 1996.

Brief description of amendment: The proposed amendment would (1) increase the scope of work permitted at SNEF to include asbestos removal, removal of defunct plant electrical services, and installation of decommissioning support facilities and systems; (2) eliminate areas within the containment vessel requiring administrative access controls; and (3) revise the facility layout diagram to allow the exclusion area to consist of, at a minimum, the containment vessel and, at a maximum, to extend to the SNEF outer security fence and to include on the diagram the footprint of the proposed decommissioning support facilities.

Date of issuance: July 23, 1996

Effective date: July 23, 1996

Amendment No.: 14

Amended Facility License No. DPR-4: Amendment changed the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31182).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 23, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 1, 1996

Brief description of amendment: The amendment revised Technical Specifications to allow an increase in the initial nominal Uranium-235 enrichment limit for fuel assemblies which may be stored in the spent fuel pool.

Date of issuance: July 30, 1996

Effective date: July 30, 1996

Amendment No.: 174

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 13, 1996 (61 FR 10396) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1996 . No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 9, 1996

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant (DCPP), Unit Nos. 1 and 2 by revising Technical Specifications (TS) 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation,'' and 3/4.6.2, ''Containment Spray System.'' The changes clarified the description of the initiation signal required for operation of the containment spray system at DCPP and correctly incorporated changes made in previous license amendments. All of the changes are administrative in nature.

Date of issuance: August 1, 1996

Effective date: August 1, 1996

Amendment Nos.: Unit 1 - 114; Unit 2 - 112

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31184) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: June 3, 1996, as superseded by application dated June 25, 1996.

Brief description of amendments: These amendments revise Improved Technical Specification (TS) 3.3.11, ''Post Accident Monitoring Instrumentation (PAMI),'' and Improved TS 5.5.2.13, ''Diesel Fuel Oil Testing Program.'' Specifically, the number of instruments required to measure reactor coolant inlet temperature (T_{Cold}), and reactor coolant outlet temperature (T_{Hot}), will be revised from two per loop to two (with one cold leg indication and one hot leg indication per steam generator). These changes to the Improved TS reinstate provisions of the current San Onofre Nuclear Generating Station (SONGS), Unit Nos. 2 and 3 TS revised as part of NRC Amendment Nos. 127 and 116 for SONGS Units 2 and 3 (referred to as the Improved TS).

Date of issuance: August 1, 1996

Effective date: August 1, 1996, to be implemented by August 9, 1996.

Amendment Nos.: Unit 2 - 130; Unit 3 - 119

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 2, 1996 (61 FR 34452) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 1, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 26, 1995, as supplemented April 25, 1996. The April 25, 1996, letter provided clarifying information that did not change the scope of the July 26, 1995, application and initial proposed no significant hazards consideration determination.

Brief description of amendments: The amendments clarify the Technical Specifications to allow switching of charging and low-head safety injection pumps during unit shutdown conditions. These amendments also allow additional methods of rendering these same pumps incapable of injecting into the reactor coolant system when required for low-temperature conditions.

Date of issuance: July 24, 1996

Effective date: July 24, 1996

Amendment Nos.: 202 and 183

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45190) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 8, 1996

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification (TS) 5.3, ''Reactor,'' and TS 5.4, ''Fuel Storage,'' by removing the enrichment limit for reload fuel and imposing fuel storage restrictions on the spent fuel storage racks and the new fuel storage racks. The revised TS are structured consistent with the Westinghouse Standard Technical Specifications and the fuel storage restrictions are based on the criticality analyses used to support Amendment No. 92 dated March 7, 1991.

Date of issuance: July 23, 1996

Effective date: July 23, 1996

Amendment No.: 124

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 19, 1996 (61 FR 31185) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 1, 1995

Brief description of amendment: This amendment revises TS Section 6.0, throughout, to reflect an organization change in which the position of Vice President Plant Operations has been eliminated and the positions of Chief Operating Officer and Plant Manager were created. This change assigns certain management responsibilities to the Chief Operating Officer and Plant Manager.

Date of issuance: August 1, 1996

Effective date: August 1, 1996, to be implemented within 30 days of issuance.

Amendment No.: 100

Facility Operating License No. NPF-42. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25716) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 1996. No significant hazards consideration comments received: No.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 7th day of August 1966.

For the Nuclear Regulatory Commission

Steven A. Varga, Director,

Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96–20586 Filed 8-13-96; 8:45 am]

BILLING CODE 7590-01-F

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 21, 1996, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Legislative Proposals 105–4 (Greater Access to Tax Return Information) and 105–14 (Conform the Statute of Limitations on the Crediting of Compensation to the Statute of Limitations on the Payment of taxes).

(2) Regulations:

A. Part 211, Pay for Time Lost.

B. Parts 211, 230 and 255 (Proposed Cost Savings Analyses).

(3) Coverage Determination—CSX Transportation Company—Nurse Consultants.

(4) CSX Intermodal, Inc.

(5) Proposed Draft Agreement with the Social Security Administration.

(6) Medicare Part B Service Contract.

(7) Press Release No. 96–8—Direct Deposit Required for New RRB Claims.

(8) Policy for Determining Competitive Areas for a Reduction-in-Force (RIF).

(9) Labor Member Truth in Budgeting Status Report.

Portion Closed to the Public

(A) *Pending Board Appeals*

1. Walter Coleman

2. Grace P. Sansom

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: August 9, 1996.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–20818 Filed 8–12–96; 9:38 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22127; No. 812–10204]

American Skandia Life Assurance Corporation, et al.

August 8, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Exemption from the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: American Skandia Life Assurance Corporation (''American Skandia''), American Skandia Assurance Corporation Variable Account B (Class 2 Sub-Accounts) (''Separate Account'') and American Skandia Marketing, Inc. (''Marketing'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1960 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account (''Other Account'') established by American Skandia to support certain flexible premium variable annuity contracts (''Contracts'') as well as other variable annuity contracts issued by American Skandia that are substantially similar in all material respects to the Contracts (''Future Contracts''). In addition, Applicants request that the exemptions requested herein apply to any other broker-dealer that may in the future serve as distributor of and/or principal underwriter for Contracts or Future Contracts (''Future Broker-Dealers''). Any Future Broker-Dealer will be a member of the National Association of Securities Dealers, Inc. (''NASD''), and will be controlling, controlled by, or under common control with American Skandia.

FILING DATE: The application was filed on June 17, 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 SEC 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 September 3, 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 requestor'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 SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, M. Patricia Paez, Corporate Secretary, c/o Jeffrey M. Ulness, Esq., American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, Connecticut 06484–9932.

FOR FURTHER INFORMATION CONTACT: Peter R. Marcin, Law Clerk, 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 SEC.

Applicants' Representations

1. American Skandia, a stock life insurance company, is organized in Connecticut and licensed to do business in the District of Columbia and all of the

United States. American Skandia is a wholly owned subsidiary of American Skandia Investment Holding Corporation (''ASIHC''), which in turn is wholly owned by Skandia Insurance Company Ltd., a Swedish corporation.

2. The Separate Account is a separate account established by American Skandia under Connecticut law. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

3. American Skandia will establish for each investment option offered under the Contract a Separate Account Class 2 sub-account (''Sub-account''), which will invest solely in a specific corresponding portfolio of certain designated investment companies (''Funds''). The Funds will be registered under the 1940 Act as open-end management investment companies. Each Fund portfolio will have separate investment objectives and policies.

4. Marketing will serve as the distributor of and principal underwriter for the Contracts. Marketing, a wholly owned subsidiary of ASIHC, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the NASD. Future Broker-Dealers also may serve as distributors of and/or principal underwriters for Contracts and Future Contracts.

5. The Contracts are individual and group flexible premium variable annuity contracts. The Contracts may be used in connection with retirement plans that qualify for favorable federal income tax treatment under Section 401, Section 403, or Section 408 of the Internal Revenue Code of 1986, as amended, or may be purchased on a non-tax qualified basis.

6. The minimum initial payment for a Contract is $10,000 unless the Contract owner authorizes and American Skandia accepts the use of a program of periodic purchase payments and such payments received in the first year total American Skandia's then current minimum payments under such a program. Subsequent purchase payments must be at least $100 except pursuant to a periodic purchase payment program. There is no maximum issue age unless where required by law or regulation. No subsequent purchase payments are accepted after the annuity date. Purchasers of Contracts will not pay any sales charge when Contracts are purchased or redeemed. An owner may allocate purchase payments or account value to one or more Sub-accounts, each of which will invest in a corresponding portfolio of the Funds. Purchase payments will be credited with the investment experience of the selected Sub-accounts. In most jurisdictions, an owner also may allocate purchase payments to a fixed investment option.

7. In the accumulation phase, a death benefit is payable upon the death of the first Contract owner or group Contract participant (if the contract is held by one or more natural persons) or upon the death of the annuitant (if the contract is held by an entity and there is no contingent annuitant).

8. The death benefit after the earlier of ten Contract years or the decedent's reaching age 85 is the Account Value.[1] Prior to that, the death benefit is the greater of (a) or (b), where: (a) is the Account Value of the Sub-accounts and the Interim Value of Fixed Allocations, and (b) is a minimum death benefit.[2] The minimum death benefit is the sum of all purchase payments less the sum of all withdrawals. If a decedent was not named an owner or annuitant as of or within 60 days of the issue date of the Contract, and did not become such as a result of the death of a prior Contract owner, group Contract participant or annuitant, the minimum death benefit is suspended as to that person for a two-year period from the date he or she first became a Contract owner, group Contract participant or annuitant.

9. Prior to the annuity date, annually and upon surrender, American Skandia will deduct a maintenance fee equaling the smaller of $35 or 2% of Account Value in the Sub-account holdings attributable to any particular Contract in the same proportion as each such Sub-account holding bears to the Account Value of the Contract. This fee may be waived under certain circumstances. During the accumulation period, American Skandia also will deduct from the Separate Account, on a daily basis, an administration charge at the rate of 0.15% per annum of the average daily total value of assets of the Separate Account. The sum of the maintenance fee and administrative charge assessed against the Separate Account will not exceed the total anticipated costs of services to be provided over the life of the Contracts, in accordance with the applicable standards of Rule 26a–1 under the 1940 Act.

10. No deduction or charge will be made from purchase payments for sales or distribution expenses, nor will any sales charge be assessed on surrender or withdrawal from Contracts.

11. American Skandia proposes to deduct a daily mortality and expense risk charge equal to an effective annual rate of 0.50% of the daily net asset value of the Separate Account. Of this amount, approximately 0.25% is for mortality risks and 0.25% is for expense risks. The level of this charge with respect to the Contracts is guaranteed and cannot change without the approval of appropriate regulatory authorities, including the SEC. American Skandia may issue Future Contracts with a mortality and expense risk charge not exceeding 1.00%.

12. American Skandia's assumption of mortality risk guarantees that the variable annuity payments made to owners will not be affected by the mortality experience of persons receiving such payments or of the general population. American Skandia assumes this mortality risk by virtue of annuity rates incorporated in the Contracts which cannot be changed. If the experience of American Skandia is less favorable than its estimates based on actuarial determination, then American Skandia must provide monies from its general funds to fulfill its contractual obligations. Additional mortality risks are assumed when the Sub-accounts decline in value resulting in losses to American Skandia on paying death benefits. If the actual experience is more favorable than American Skandia's assumptions, however, then American Skandia will benefit from the gain.

13. The expense risk undertaken by American Skandia is that the actual cost of maintaining the contracts prior to the annuity date may exceed the administration charge and maintenance fees assessed. Because the administration charge and maintenance fees cannot be increased by American Skandia with regard to Contracts issued, American Skandia assumes the risk that these charges will be insufficient to cover actual administration and maintenance costs.

[1] The ''Account Value'' is the value of each allocation to a Sub-Account or a fixed investment option prior to the annuity date, plus any earnings, and/or less any losses, distributions and charges thereon, before assessment of any applicable maintenance fee. Account Value is determined separately for each Sub-account and for each fixed investment option and then totaled to determine Account Value for the Contract. Account Value in each fixed investment option on other than the maturity date of such investment option may be calculated using a market value adjustment.

[2] ''Fixed Allocation'' is an allocation of Account Value that is to be credited a fixed rate of interest for a specified guarantee period during the accumulation phase and is to be supported by assets in American Skandia Life Assurance Corporation Separate Account D (a non-unitized separate account). ''Interim Value'' is (a) the initial value of a Fixed Allocation plus all interest credited thereon, less (b) the sum of all previous transfers and withdrawals of any type from such Fixed Allocation of such Interim Value plus interest thereon from the date of each withdrawal or transfer.

14. If the charges for the mortality and expense risks prove insufficient to cover mortality and administration and maintenance costs, then the excess of the actual expenses over the charges assessed will result in a loss; such loss will be borne by American Skandia. If the charges prove more than sufficient to cover the actual costs, however, the excess will result in a profit to American Skandia. American Skandia may use any profit derived from this mortality and expense risk charge for any lawful purpose, including payment or recoupment of sales and distribution expenses.

15. Should the Contract owner or group Contract participant live in a jurisdiction that levies a premium tax, American Skandia will pay the taxes when due. State premium taxes may range up to 3.5% of purchase payments, and are subject to change.

16. A charge of $10 per transfer is assessable for each transfer after the twelfth such transfer in an annuity year. Renewals of transfers of Account Value from a Fixed Allocation at the end of its guarantee period are not subject to the transfer charge and are not counted in determining whether other transfers may be subject to the transfer charge.[3] The fee is charged only if there is Account Value in at least one Sub-account immediately subsequent to such transfer.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule, or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of an annual mortality and expense risk charge of .50% from the net assets of the Separate Account and the Other Accounts, in connection with the Contracts, and, with respect to Future Contracts, a maximum mortality and expense risk charge of 1.00% per annum. Applicants also seek exemptive relief to permit Future Broker-Dealers to serve as distributors of and/or principal underwriters for Contracts and Future Contracts.

4. Applicants submit that American Skandia is entitled to reasonable compensation for its assumption of morality and expense risks. Applicants represent that the mortality and expense risk charge as set forth herein, is consistent with the protection of investors because such charge is a reasonable and proper insurance charge.

5. American Skandia represents that the .50% mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar products, taking into consideration such factors as, among others, the current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. American Skandia will maintain at its principal offices, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

6. Similarly, prior to making any Future Contracts available through the Separate Account or Other Accounts, Applicants will represent that the mortality and expense risk charge under any such Future Contracts is within the range of industry practice for comparable contracts. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for this representation.

7. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. American Skandia has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and Other Accounts, Contracts owners, and group Contract participants. American Skandia represents that it will maintain, and make available to the Commission upon request, a memorandum setting forth the basis of such conclusion. In addition, Applicants will keep, and make available to the Commission, a memorandum setting forth the basis for the same representation with respect to Future Contracts offered by the Separate Account or Other Accounts.

8. Applicants submit that their request for exemptive relief for deduction of the mortality and expense risk charge from the assets of the Separate Account, or any Other Accounts in connection with Contracts and Future Contracts underwritten and/or distributed by Marketing or Future Broker-Dealers, would promote competitiveness in the variable annuity contract market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of American Skandia's resources. Applicants further submit that Contract owners and group Contract participants would not receive any benefit or additional protection by requiring American Skandia repeatedly to seek exemptive relief and that such requests for exemptive relief would present no issue under the 1940 Act that has not already been addressed in this application. Moreover, Applicants submit that requiring American Skandia to file additional applications would impair American Skandia's ability effectively to take advantage of business opportunities as they arise.

9. The Separate Account and Other Accounts will be invested only in a management investment company that undertakes, in the event it adopts a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by its board of directors or trustees, the majority of whom are not ''interested persons'' of the company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons submitted above, Applicants submit that the exemptive relief requested 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20714 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

[3] A ''renewal'' is a transaction that occurs automatically as of the last day of the guarantee period of a Fixed Allocation, unless American Skandia receives alternative instructions.

[Investment Company Act Release No. 22122; 812–10186]

The Prudential Institutional Fund, et al.; Notice of Application

August 7, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: The Prudential Institutional Fund (''PIF''), Prudential Jennison Fund, Inc. (''Jennison Fund''), Prudential Allocation Fund (''Allocation Fund''), Prudential Government Income Fund, Inc. (''Government Income Fund''), Prudential MoneyMart Assets, Inc. (''MoneyMart Fund''), Prudential World Fund, Inc. (''World Fund''), Prudential Institutional Fund Management, Inc. (''PIFM''), Prudential Mutual Fund Management, Inc. (''PMF''), The Prudential Investment Corporation (''PIC''), Jennison Associates Capital Corp. (''Jennison''), Mercator Asset Management, L.P. (''Mercator'') and The Prudential Insurance Company of America (''Prudential'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the Jennison Fund, the Balanced Portfolio of the Allocation Fund (''Balanced Portfolio''), the Government Income Fund, the MoneyMart Fund, and the International Stock Series of the World Fund (''International Series'') to acquire substantially all of the assets of corresponding series of PIF in exchange for shares of the acquiring funds.

FILING DATES: The application was filed on May 30, 1996 and amended on August 5, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 3, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. PIF and PIFM, 30 Scranton Office Park, Moosic, Pennsylvania 18507; Jennison Fund, Allocation Fund, Government Income Fund, MoneyMart Fund, World Fund, and PMF, One Seaport Plaza, New York, New York 10292; PIC and Prudential, 751 Broad Street, Newark, New Jersey 07102; Jennison, 466 Lexington Avenue, New York, New York 10017; and Mercator, 2400 East Commercial Boulevard, Fort Lauderdale, Florida 33308.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, 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 from the SEC's Public Reference Branch.

Applicants' Representations

1. PIF is organized as a Delaware business trust and is registered under the Act as a diversified open-end management investment company. Currently, PIF consists of seven separate series: the Balanced Fund, the Income Fund, the Money Market Fund, the Growth Stock Fund, the Stock Index Fund, the International Stock Fund, and the Active Balanced Fund (the ''PIF Funds''). Each PIF Fund offers for sale one class of shares, which are offered without a sales charge or distribution or service fee. Shares of the PIF Funds are offered exclusively to retirement programs and arrangements through plan sponsors, to Individual Retirement Accounts and to certain institutional investors.

2. PIFM is the investment adviser to each PIF Fund. PIFM has entered into subadvisory agreements with PIC, Jennison, and Mercator (together, the ''Subadvisers'') whereby each Subadviser furnishes investment advisory services to one or more PIF Funds.

3. The Jennison Fund, Government Income Fund, MoneyMart Fund, and World Fund each is organized as a Maryland corporation. The Allocation Fund is organized as a Massachusetts business trust. The Jennison Fund, Government Income Fund, MoneyMart Fund, Allocation Fund, and World Fund (the ''PMF Funds'') each is registered under the Act as a diversified open-end management investment company. Currently, the Allocation Fund consists of two series: the Balanced Portfolio and the Strategy Portfolio. The World Fund consists of two series: the International Series and the Global Series.

4. The PMF Funds (other than the MoneyMart Fund) each offer four classes of shares: Class A, Class B, Class C, and Class Z. Class Z shares are offered to certain institutional investors without a sales charge or rule 12b–1 fee. The MoneyMart Fund issues two classes of shares, Class A and Class Z. Class Z shares of the MoneyMart Fund are offered without a sales charge or rule 12b–1 fee.

5. PMF is the investment adviser to the PMF Funds. PMF has entered into a subadvisory agreement with Jennison whereby Jennison furnishes investment advisory services to the Jennison Fund. PMF also has entered into a subadvisory agreement with PIC whereby PIC furnishes investment advisory services to the Allocation Fund, the Government Income Fund, the MoneyMart Fund, and the World Fund.

6. PIFM, PMF, and the Subadvisers each is registered as an investment adviser under the Investment Advisers Act of 1940. PIFM, PMF, PIC, and Jennison are direct or indirect wholly-owned subsidiaries of Prudential. Mercator is a limited partnership of which Prudential, through a wholly-owned subsidiary, maintains a limited partnership interest.

7. Prudential beneficially owns shares in several PIF Funds. As of March 31, 1996, Prudential owned 51.48% of the outstanding voting securities of the Income Fund and 47.63% of the outstanding voting securities of the Money Market Fund. Through the separate account of the Prudential Variable Contract Investment Fund, Prudential also holds 5.6% of the outstanding voting securities of the Growth Stock Fund, 23.23% of the outstanding voting securities of the Balanced Fund, and 12.05% of the outstanding voting securities of the International Stock Fund. Through its employees' savings plan, Prudential holds (on behalf of its employees) 28.93% of the outstanding voting securities of the Growth Stock Fund, 25.74% of the outstanding voting securities of the Balanced Fund, and 42.21% of the outstanding voting securities of the International Stock Fund. In addition, Prudential Securities, Inc., a wholly-owned direct subsidiary of Prudential, holds on behalf of its clients, without any direct interest, more than 5.00% of the outstanding shares of each PMF Fund and is registered as a broker-dealer under the Securities Exchange Act of 1934.

8. Prudential has formed the ''Money Management Group'' to combine certain pension, investment, mutual fund, and annuity businesses into a single business group. One strategic initiative of this combination is to present a single broad mutual fund family to the pension marketplace. Consistent with this change, Prudential and the trustees of PIF and the trustees/directors of each PMF Fund believe it would be in the best interest of shareholders to consolidate certain mutual funds sponsored by Prudential. As a result, each PMF Fund (the Allocation Fund only with respect to the Balanced Portfolio and the World Fund only with respect to the International Series) proposes to acquire all or substantially all of the assets of a corresponding PIF Fund in exchange for Class Z shares of that PMF Fund, which will be distributed by that PIF Fund to its shareholders (each, a ''Reorganization''). The two remaining PIF Funds that are not involved in the Reorganizations (the Stock Index Fund and the Active Balanced Fund) will not merge into a PMF Fund, but will enter into new investment advisory and distribution contracts with PMF and related entities and thereby become part of the same ''group of investment companies'' of PMF, as that term is defined in rule 11a–3 under the Act. The exchange pursuant to each Reorganization will take place on the basis of the relative net asset values per share of each PIF Fund and PMF Fund.

9. Subject to and contingent upon receipt of the affirmative vote of the holders of at least a majority of the outstanding shares of beneficial interest in each affected PIF Fund, the following Reorganizations will take place: (a) the Jennison Fund will acquire substantially all of the assets of the Growth Stock Fund in exchange for shares of the Jennison Fund and the assumption by the Jennison Fund of the liabilities of the Growth Stock Fund; (b) the Balanced Portfolio will acquire substantially all of the assets of the Balanced Fund in exchange for shares of the Balanced Portfolio and the assumption by the Balanced Portfolio of the liabilities of the Balanced Fund; (c) the Government Income Fund will acquire substantially all of the assets of the Income Fund in exchange for shares of the Government Income Fund and the assumption by the Government Income Fund of the liabilities of the Income Fund; (d) the MoneyMart Fund will acquire substantially all of the assets of the Money Market Fund in exchange for shares of the MoneyMart Fund and the assumption by the MoneyMart Fund of the liabilities of the Money Market Fund; and (e) the International Series will acquire substantially all of the assets of the International Stock Fund in exchange for shares of the International Series and the assumption by the International Series of the liabilities of the International Stock Fund. The Growth Stock Fund, the Balanced Fund, the Income Fund, the Money Market Fund, and the International Stock Fund hereinafter are referred to as the ''Acquired Funds,'' and the Jennison Fund, the Balanced Portfolio, the Government Income Fund, the MoneyMart Fund, and the International Series are referred to as the ''Acquiring Funds.'' The Acquired Funds and the Acquiring Funds together are referred to as the ''Funds,'' and each pair of Funds participating in the Reorganization are referred to as ''corresponding Funds.''

10. Subject to approval by the shareholders of the PIF Funds at meetings to be held on September 6, 1996, the closing date of the Reorganizations (the ''Closing Date'') is expected to be September 20, 1996. Pursuant to an Agreement and Plan of Reorganization entered into between each Acquiring Fund and its corresponding Acquired Fund in connection with their Reorganization (each, a ''Plan''), each Acquired Fund will endeavor to discharge all of its known liabilities and obligations prior to or as of the Closing Date. Each Acquiring Fund will assume all liabilities, expenses, costs, charges, and reserves or obligations of its corresponding Acquired Fund as of the Closing Date. As soon as conveniently practicable after the Closing Date, each Acquired Fund will distribute *pro rata* to its shareholders of record as of the close of business on the Closing Date the shares of the Corresponding Acquiring Fund received by the Acquired Fund in the Reorganization. The number of full and fractional shares of an Acquiring Fund to be issued to shareholders of its corresponding Acquired Fund will be determined by dividing the net asset value of that Acquired Fund by the net asset value of a Class Z share of that corresponding Acquiring Fund as of 4:15 p.m. on the Closing Date. The net asset value per share of each Fund will be determined by dividing its assets, less liabilities, by the total number of its outstanding shares.

11. The board of trustees of PIF and the boards of directors or trustees of the Acquiring Funds (collectively, the ''Boards''), including, in each case, the members of the Boards who are not interested persons, have reviewed and approved the form of each Plan, including the consideration to be paid or received by each of the Funds. The Boards also have concluded that the Reorganizations are in the best interests of the shareholders of the respective Funds and will not result in the dilution of the interests of any of the existing shareholders of the Acquired Funds or the Acquiring Funds.

12. In recommending approval of the Reorganizations to the shareholders of the Acquired Funds and in approving the terms of the proposed Reorganizations, the Boards considered the following factors: (a) The capabilities and resources of the Acquiring Funds' investment adviser, principal underwriter, administrator, and transfer agent in the areas of marketing, investment, and shareholder servicing; (b) expense ratios and information regarding the fees of the Funds; (c) the comparative investment performance of the Acquired Funds and the Acquiring Funds; (d) the terms and conditions of the Reorganizations and whether the Reorganizations would result in dilution of shareholder interests; (e) the advantages of eliminating competition and duplication of effort inherent in marketing funds with the same investment objective; (f) the compatibility of the Funds' investment objectives, as well as service features available to shareholders in the respective Funds; (g) the cost incurred by the Funds as a result of the Reorganizations; and (h) the tax consequences of the Reorganizations.

13. A prospectus/proxy statement describing the proposed Reorganizations has been sent to shareholders of each Acquired Fund on or about July 29, 1996. Such prospectus/proxy statement discloses the fees and expenses that will be borne by the shareholders of the Acquired Fund after the Reorganizations as shareholders of the Acquiring Funds and the projected expense ratios of the combined funds based upon estimates developed by PMF as manager and administrator to the Acquiring Funds.

14. The consummation of each Reorganization is subject to the conditions set forth in each Plan, including that the parties will have received exemptive relief from the SEC with respect to the order requested herein. Each Fund shall be liable for its expenses incurred in connection with the Reorganizations (except that PIF's International Stock Fund will bear the expense of its Reorganization). Expenses will be allocated *pro rata* in proportion to each Fund's respective assets. Because the International Series will have no assets as of the Closing Date, each PIF International Stock Fund shareholder will receive Class Z shares

of the International Series identical in number and net asset value to his or her International Stock Fund shares.

Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by such registered company, any security or other property.

2. Section 2(a)(3) of the Act defines the term ''affiliated person of another person'' to include (a) any person directly or indirectly owning, controlling, or holding with power to vote five percent or more of the outstanding voting securities of such other person, (b) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person, and (c) any person directly or indirectly, controlling, controlled by, or under common control with such other person. Section 2(a)(3) further provides that the term ''affiliated person of another person'' includes any investment adviser of such other person if such other person is an investment company. The PIF Funds could be deemed to be an affiliated person of an affiliated person of the PMF Funds because of Prudential's ownership interest in the PIF Funds. Thus, the proposed Reorganizations could be deemed to be subject to the provisions of section 17(a).

3. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the proposed Reorganizations meet the standards set forth in section 17(b). The Boards of the Funds, including the members of the Boards who are not interested persons, having reviewed and approved the form of each Plan, including the consideration to be paid or received by each of the Funds. The Boards also have concluded that the Reorganizations are in the best interests of the shareholders of the respective Funds and that the Reorganizations will not result in the dilution of the interests of any of the existing shareholders of the Acquired Funds or the Acquiring Funds. The Reorganizations are expected to benefit each Fund's shareholders because of estimated lower expense ratios and the expected increase in size of the combined funds, both immediately after the Reorganizations and through improved potential for growth in the future, which should assist in each Fund's ability to invest more effectively, to achieve certain economies of scale and, in turn, to potentially increase its operating efficiencies and facilitate portfolio management.

5. Applicants believe that the terms of the Plans are fair and reasonable and do not involve overreaching on the part of any person concerned. In addition, the proposed Reorganizations are consistent with the policies of the respective Funds recited in their respective registration statements and reports filed under the Act. Applicants assert that granting the requested order is consistent with the provisions, policies and purposes of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20719 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22128; 812–9890]

Southeast Interactive Technology Fund I, LLC, et al.; Notice of Application

August 9, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Southeast Interactive Technology Fund I, LLC (the ''Fund''), One Room Systems, Inc. (the ''Company''), and E. Lee Bryan (''Mr. Bryan'').

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from sections 17(a)(1) and (3) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Fund to provide a revolving line of credit to an affiliated person of an affiliated person of the Fund.

FILING DATES: The application was filed on December 13, 1995 and amended on June 19, 1996 and July 29, 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 29, 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 Fifth Street, N.W., Washington, D.C. 20549. Applicants: the Fund, 2200 West Main Street, Suite 900, Durham, North Carolina 27705; the Company, 2525 Meridian Parkway, Suite 220, Durham, North Carolina 27713; and Mr. Bryan 2525 Meridian Parkway, Suite 350, Durham, North Carolina 27713.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, 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.

Applicants' Representations

1. The Fund, a North Carolina limited liability company, is a closed-end management investment company that is registered under the Act. The Fund's investment objective is to seek long-term capital appreciation by investing primarily in equity and equity-related securities of interactive information and visual technology companies located in the southeastern United States. On June 13, 1995, the Fund issued 244 shares of membership interest (''Shares'') at a purchase price of $25,000 per Share to 168 ''accredited investors'' in a private offering conducted in accordance with the provisions of Regulation D under the Securities Act of 1933 (the ''Securities Act'').

2. Montrose Venture Partners, LLC, an investment adviser that is registered under the Investment Advisers Act of 1940, serves as investment adviser to the Fund (the ''Adviser''). Three of the five principals of the Adviser comprise the board of directors (the ''Board'') of the Fund.

3. The Company is a North Carolina corporation that develops and

distributes multimedia educational and entertainment products.

4. Mr. Bryan owns one Share of the Fund and is one of the members of the Board of the Fund. Mr. Bryan also is one of the principals of the Adviser. In addition, Mr. Bryan is the Company's founder and owns 76% of the Company's outstanding capital stock.

5. On November 2, 1995, the Adviser caused the Fund to enter into an agreement (the ''Agreement'') with the Company, subject to the Commission's approval, that provides that the Fund will extend a revolving line of credit to the Company of up to $600,000 (the ''Loan''). Applicants represent that Mr. Bryan did not participate in the Adviser's decision to cause the Fund to enter into the Agreement. In addition, as more fully described below, the Loan has substantially similar terms to a bridge financing arrangement (the ''Bank Facility'') between the Company and an unaffiliated lender, First Union National Bank of North Carolina (the ''Bank'').

6. The Loan is payable in full on the date one year from the date the first advance is made or such earlier date as the Loan may become due because the Fund elects to accelerate the Loan upon an event of default. The Loan has an interest rate of 10% per year and is fully secured with a first priority security interest in substantially all of the Company's receivables. Mr. Bryan, who has a personal net worth in excess of the Loan amount, will personally guarantee the Loan. As long as there is an outstanding loan balance, the Company will maintain a life insurance policy on Mr. Bryan of $250,000 with the Fund as the primary beneficiary, and the Fund may require an increase in such coverage as a condition to advances in excess of $250,000.

7. In addition, the Fund will hold an option that permits it to convert the principal balance of the loan to shares of common stock (''Common Stock'') of the Company at the ''Conversion Price'' described below. The Conversion Price initially will be $1.00 per share and is based upon the Company currently having 6,234,302 shares of Common Stock issued and outstanding. The Conversion Price will adjust proportionately upon any stock splits, combinations, dividends, or similar changes to the capital structure.

8. The Fund also will be issued a warrant to purchase additional shares (a ''Warrant'') at the Conversion Price at the time the Warrant is exercised. The Warrant may be exercised only once and only from the date of its issuance through the date seven years after its issuance. If the Company registers securities under the Securities Act, the Fund will have ''piggyback'' registration rights with respect to any Common Stock acquired upon conversion of the Loan or exercise of the Warrant that will enable the Fund to sell Common Stock *pro rata* with the shares of any other selling shareholders.

9. In the event the Company plans to sell stock through a private or public offering, at a price per share of Common Stock of at least twice the Conversion Price, or otherwise obtain a capital infusion of at least $2,000,000 (the ''Equity Infusion''), the Company will be obligated to notify the Fund at least 45 days prior to the anticipated closing date of such offering. On or before the closing, the Fund may elect to convert the Loan into Common Stock.

10. Furthermore, for the one year period following closing of the Agreement, the Fund and the Company will agree upon a budget (the ''Budget'') for the Company. The proceeds of the Loan will be used only for payment of expenses and costs in accordance with the Budget. The Budget will be modified only with the consent of the Fund. Finally, as long as the Loan is outstanding, the Company is required to provide financial reports to the Fund.

Applicants' Legal Analysis

1. Applicants request an order under section 17(b) of the Act for an exemption from sections 17(a) (1) and (3) of the Act. The Order would permit the Fund to provide a revolving line of credit to an affiliated person, the Company, of an affiliated person, Mr. Bryan, of the Fund.

2. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, knowingly to sell any security or other property to such registered company. Section 17(a)(3) generally prohibits an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, to borrow money or other property from such registered company.

3. Section 2(a)(3)(B) of the Act defines an ''affiliated person'' of another person to be any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person. Because 76% of the outstanding capital stock of the Company is owned by Mr. Bryan, the Company is an affiliated person of Mr. Bryan. Section 2(a)(3)(D) states that an ''affiliated person'' of another person includes any officer, director, partner, copartner, or employee of such other person. Because Mr. Bryan is a member of the Board of the fund, he is an affiliated person of the Fund. Accordingly, the Company is an affiliated person of an affiliated person of the Fund.

4. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act.

5. In approving the Loan, the Fund, including the disinterested directors, considered that the Company entered into the Bank Facility with the Bank. The terms of the Bank Facility do not differ materially from the terms of the Agreement except that the Bank, Facility does not include any equity conversion feature and was not accompanied by a warrant. In addition, the Bank Facility will be repaid in full by the Company with the proceeds of the Loan. Upon repayment of the Bank Facility, the Bank will release any security interests it has in the Company's assets. Thus, applicants believe that the Bank Facility demonstrates that the terms of the Loan are equivalent to an arms-length transaction and are therefore reasonable and fair to the Fund.

6. In addition, the Board considered the fact that the Loan is secured by substantially all the receivables of the Company and an assignment of certain contract rights that are pre-approved by the Fund. Accordingly, the Board determined that the Loan is adequately secured and that its terms are reasonable and fair and do not involve overreaching on the part of the Company or Mr. Bryan.

7. Applicants state that the Fund's registration statement specifically provides that it will lend money to companies located in the southeastern United States, in which a principal of the Adviser has a controlling interest, that develop interactive information and visual technologies. Thus, applicants assert that the Loan is consistent with the investment policy of the Fund. Applicants also believe that because of the numerous safeguards present in the terms of the Loan, the Loan does not pose any of the abuses contemplated by section 17(a) and therefore is consistent with general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20715 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37537; File No. SR–BSE–96–9]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to Elimination of Clearing Support Fees

August 7, 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 23, 1996 the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule pertaining to support services fees, eliminating fees which are obsolete due to the discontinuation of the Boston Stock Exchange Clearing Corporation as a support facility for the Depository Trust Company. The text of the proposed rule change is as follows [deleted text is in brackets]:

Membership and Other Fees

(1) *Membership*	
Membership Dues	$400.00 per membership per quarter.
Clearing Corporation Deposit.	$6,000.00 (refundable).
Account Maintenance.	$200.00 per month.
Transfer of Membership.	$500.00 for intra-firm or inter-firm.
BSE Rules and Guides.	CCH annual subscription rate.
(2) [Support Services]	
[DTC Facility.	
Deposit Sheets ...	$4.00 per item.
Deposit Items	$1.00 per item.
ID Activity.	
ID Trades	$1.00 per item.
ID Account Set-Up.	$1.00 per item.
ID Account Maintenance.	$.50 per item.
Envelope Processing.	$25.00 per envelope.
Distribution	$300.00 per month.
Check Issuance/ Deposit.	$300.00 per month].
[3)] Electronic Fee Access and Processing.	
Open Order Match.	$200.00 per month.
Trade Files	$100.00 per month.
P & S Blotters	$100.00 per month.
Equity Reports ...	$100.00 per month.
Remote BEACON Access.	Greater of $100.00 or monthly transaction fees for trades routed through terminal.
ADP User's Fee	Greater of $1,200.00 or monthly transaction fees.
Late Fees	1.5% will be charged on outstanding balances as of the last calendar day of the month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate fees pertaining to support services made obsolete by the discontinuation of the Boston Stock Exchange Clearing Corporation as a support facility for the Depository Trust Company.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 [1] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–9 and should be submitted by September 4, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20716 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

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[1] 17 CFR 240.19b–4.

[2] 17 CFR 200.30(a)(12).

[Release No. 34–37541; File No. SR–MBSCC–96–04]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change To Establish Term Limits for the Chairman of the Board of Directors

August 8, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 24, 1996, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBSCC–96–04), as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. 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 proposed rule change will amend MBSCC's by-laws to limit the term of office of the Chairman of the Board to not more than four consecutive one year terms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC believes that the proposed term limit will be in the interest of its participants and is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will further the opportunity for a diversity of individuals to serve as MBSCC's Chairman of the Board and thereby participate in the management of MBSCC.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety 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 MBSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to the file number SR–MBSCC–96–04 and should be submitted by September 4, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20717 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37536; File No. SR–Phlx–96–17]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Reducing the Value of the Super Cap Index

August 7, 1996.

On May 24, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the value of its Super Cap Index (''Index'') option (''HFX'') to one-third its present value by tripling the divisor used in calculating the Index. The Index is comprised of the top five options-eligible common stocks of U.S. companies traded on the New York Stock Exchange, as measured by capitalization. The other contract specifications for the HFX will remain unchanged.

Notice of the proposal was published for comment and appeared in the Federal Register on June 25, 1996.[3] No comment letters were received on the proposal. This order approves the Phlx's proposal.

I. Description of the Proposal

The Exchange began trading the HFX in November, 1995.[4] The Index was created with a value of 350 on its base date of May 31, 1995 which rose to 430 on April 12, 1996. Thus, the value of the Index has increased 23% in less than one year. Consequently, the premium for HFX options has also risen.

As a result, the Exchange proposes to conduct a ''three-for-one split'' of the Index, such that the value would be reduced to one-third of its present value. In order to account for the split, the number of HFX contracts will be tripled, such that for each HFX contract currently held, the holder would receive three contracts at the reduced value,

[3] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37319 (June 18, 1996), 61 FR 32881 (June 25, 1996).

[4] *See* Securities Exchange Act Release No. 36369 (October 13, 1995), 60 FR 54274 (October 20, 1995).

with a strike price one-third of the original strike price. For instance, the holder of a HFX 420 call will receive three HFX 140 calls. In addition to the strike price being reduced to one-third, the position and exercise limits applicable to the HFX will be tripled, from 5500 contracts [5] to 16,500 contracts, for a six month period after the split is effectuated. After the initial six month period, the position and exercise limits will be reduced to the original 5,500 contract limit. This procedure is similar to the one employed respecting equity options where the underlying security is subject to a two-for-one stock split, as well as previous reductions in the value of other Phlx indexes.[6] The trading symbol will remain HFX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index value, pursuant to Phlx Rule 1101A.[7] The Exchange will announce the effective date by way of Exchange memoranda to the membership, also serving as notice of the strike price and position limit changes.[8]

The Phlx states that the purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, a near-term, at-the-money call option series currently trades at approximately $1,150 per contract. The Exchange believes that certain investors and traders currently may be impeded from trading at such levels. With the Index split, that same option series (once adjusted), with all else remaining equal, could trade at approximately $387 per contract. The Phlx believes that a reduced premium value should encourage additional investor interest.

The Exchange believes that Super Cap Index Options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying stocks. By reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The Exchange believes that this, in turn, should attract additional investors and create a more active and liquid trading environment.

II. 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(b)(5) of the Act.[9] Specifically, the Commission believes that reducing the value of the Index will serve to promote the public interest and help remove impediments to a free and open securities market, by providing a broader range of investors with a means of hedging exposure to market risk associated with securities representing the most highly capitalized companies. Further, the Commission notes that reducing the value of HFX options should help attract additional investors, thus creating a more active and liquid trading market. The Commission notes that the Phlx will be providing market participants with adequate prior notice of the Index level change in order to avoid investor confusion.[10]

The Commission also believes that the Phlx's position and exercise limits and strike price adjustments are appropriate and consistent with the Act. In this regard, the Commission notes that the position and exercise limits and strike price adjustments are similar to the approach used to adjust outstanding options on stocks that have undergone a two-for-one stock split as well as reductions in value of other indexes.[11]

The Commission believes that tripling the Index's divisor will not have an adverse market impact or make trading HFX options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner (except for the change in divisor). Finally, the Phlx's surveillance procedures will also remain the same.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–96–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–20718 Filed 8–13–96; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Phlx Rule 1001A(c).

[6] *See* Securities Exchange Act Release Nos. 36577 (December 12, 1995), 60 FR 65705 (December 20, 1995) (reducing the value of the Phlx National Over-the-Counter Index); and 35999 (July 20, 1995), 60 FR 38387 (July 26, 1995) (reducing the value of the Phlx Semiconductor Index).

[7] Specifically, because the Index value would be less than 500, the applicable strike price interval would be $5 in the first four months and $25 in the fifth month and the long-term options. *See* Rule 1101A(a).

[8] *See* note 10, *infra.*

[9] 15 U.S.C. 78f(b)(5).

[10] The Phlx will be issuing two circulars to its membership prior to the effective date of this change. The first circular will advise the members generally of the reduction in value of the HFX and the temporary increase in position and exercise limits. The second circular, which will be issued within one week of the effective date of the change, will also list specific strike prices for the adjusted HFX options. Telephone Conversation between Terry McClosky, Vice President, Regulatory Services, Phlx, and James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, on August 7, 1996.

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

[12] 15 U.C.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Proposed Exercise of Option Purchase Agreement With LSP Energy Limited Partnership for Supply of Electric Energy

AGENCY: Tennessee Valley Authority.

ACTION: Notice of Intent.

SUMMARY: The Tennessee Valley Authority (TVA) will prepare an environmental impact statement (EIS) for the proposed exercise of an electric energy option purchase agreement (OPA) with LSP Energy Limited Partnership. Under the terms of the OPA, TVA may elect to purchase firm electric energy provided as 750 megawatt (MW) of base load electric capacity. This energy would be provided from a 750 MW (approximate capacity) natural gas-fired combustion turbine combined cycle power plant that LSP Energy Limited Partnership has proposed to construct and operate in the City of Batesville, Mississippi. Batesville is in Panola County and is about 140 miles north of Jackson, Mississippi and 50 miles south of Memphis, Tennessee. The EIS will evaluate the potential environmental impacts of the proposed power plant. TVA wants to use the EIS process to obtain the public's comments on this proposal.

DATES: Comments on the scope of the EIS must be postmarked no later than September 13, 1996. TVA will conduct a public meeting on the scope of the EIS. The location and time of this meeting is announced below.

ADDRESSES: Written comments should be sent to Greg Askew, PE, Senior Specialist, National Environmental Policy Act, Tennessee Valley Authority, mail stop WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499. Comments may also be e-mailed to gaskew@tva.gov.

FOR FURTHER INFORMATION CONTACT: Ron Westmoreland, Environmental Research Center, Tennessee Valley Authority, mail stop CEB 4C, Muscle

Shoals, Alabama 35662–1010. E-mail may be sent to idwfq@tva.gov.

SUPPLEMENTARY INFORMATION:

Project Description

The natural gas-fired combustion turbine combined cycle power plant proposed by LSP Energy Limited Partnership to satisfy the requirements of the OPA would be located on a 50 acre site in the Batesville Industrial Park. The industrial park fronts the east side of Mississippi Highway 35 at Brewer Road and is within the Batesville city limits. The power plant would consist of two or more natural gas fired combustion turbine-generators, two or more heat recovery steam generators and exhaust stacks, one or more steam turbine-generators, wet mechanical draft cooling towers, fuel oil storage tanks for backup fuel, feedwater and wastewater treatment systems, a 161 kilovolt switchyard, a control building, and other minor appurtenances and equipment necessary for plant operation and maintenance.

Other actions necessary for operation of the power plant include development and operation of water supply and conveyance systems, construction and operation of wastewater treatment with conveyance and outfall, construction and operation of one or more natural gas pipeline taps and conveyances, construction and operation of an interconnection between the plant switchyard and the TVA Batesville Substation, and construction and operation of improvements to the Batesville Substation. Other improvements to the TVA power transmission system may be necessary to support plant operation.

TVA's Integrated Resource Plan

TVA's integrated resource plan and final programmatic environmental impact statement, Energy Vision 2020, was completed in December 1995. Energy Vision 2020 contains recommendations for meeting future TVA customer energy requirements. Call options (option purchase agreements) are recommended as one component of TVA's preferred alternative which is a portfolio of energy resource options. The Energy Vision 2020 short-term action plan for the years 1996–2002 recommends that TVA purchase call options for up to 3,000 MW of peaking and base load capacity additions to be available in the years 1998 to 2002.

Proposed Issues to be Addressed

The EIS will describe the existing environmental, cultural, and recreational resources that may be potentially affected by construction and operation of the project. TVA's evaluation of potential environmental impacts due to project construction and operation will include, but not necessarily be limited to the impacts on air quality, water quality, aquatic and terrestrial ecology, endangered and threatened species, wetland resources, aesthetics and visual resources, noise, land use, cultural resources, and socioeconomic resources. Because the proposed project is to be located in an industrial park, the on-site issues of terrestrial wildlife, vegetation, and land use are not likely to be important.

TVA's Integrated Resource Plan, Energy Vision 2020, identifies and evaluates TVA's need for additional energy resources and the environmental impacts of alternative energy resources.

Alternatives

The results from evaluating the potential environmental impacts related to these issues and other important issues identified in the scoping process together with engineering and economic considerations will be used in selecting a preferred alternative. At this time, TVA has identified as alternatives for detailed evaluation in the EIS: (1) Not exercising the OPA (No Action), and (2) Exercising the OPA.

Scoping Process

Scoping, which is integral to the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume substantial time and effort; (3) the draft EIS is thorough and balanced; and (4) delays caused by an inadequate EIS are avoided. TVA's NEPA procedures require that the scoping process commence after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a draft EIS will be determined, in part, from written comments submitted by mail, and comments presented orally or in writing at a public meeting. The preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. TVA considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant study and new matters may be identified for potential evaluation.

The scoping process will include both interagency and public scoping. The public is invited to submit written comments or e-mail comments on the scope of this EIS no later than the date given under the **DATES** section of this notice and/or attend the public scoping meeting. TVA will conduct a public meeting on the scope of the EIS in Batesville, Mississippi on September 5, 1996. The meeting will begin at 5:00 p.m. at the offices of the Tallahatchie Valley Electric Power Association located at 200 Power Drive just west of the intersection of Mississippi Highway 6 and U.S. Interstate Highway 55.

The agencies to be included in the interagency scoping are U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Mississippi Department of Environmental Quality, Mississippi Historical Commission, and other federal, state and local agencies as appropriate.

Upon consideration of the scoping comments, TVA will develop alternatives and identify important environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment. Notice of availability of the draft EIS will be published by the Environmental Protection Agency in the Federal Register. TVA will solicit written comments on the draft EIS, and information about possible public meetings to comment on the draft EIS will be announced. TVA expects to release a final EIS by May 1997.

Dated: August 8, 1996.

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 96–20701 Filed 8–13–96; 8:45 am]

BILLING CODE 8120–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

APEC Intellectual Property Rights Contact Point List: Request for Applications for Inclusion on the List of Private-Sector Individuals Interested in Intellectual Property Rights in the Asia-Pacific Region

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for submission of applications for inclusion on list of private-sector individuals working in the area of intellectual property rights protection in the Asia-Pacific region.

SUMMARY: The ad hoc working group on intellectual property operating under the auspices of the Asia Pacific Economic Cooperation (APEC) forum is

creating a contact point list of individuals from the public and private sectors who work in the area of intellectual property rights protection (the Contact Point List). The Office of the United States Trade Representative (USTR) is notifying persons of the Contact Point List, and invites interested individuals from the private sector to submit an application for inclusion on the List.

DATES: Applications for inclusion on the Contact Point List should be submitted on or before September 16, 1996.

ADDRESSES: Applications must be submitted in the form noted below to Sybia Harrison, Office of the General Counsel, Room 222, Attn: APEC IPR Contact Point List, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Jo Ellen Urban, Director for Intellectual Property, (202) 395–6864, or Thomas Robertson, Associate General Counsel, Office of the General Counsel, (202) 395–6800, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: An ad hoc group of intellectual property authorities from the various economies participating in APEC has met on a number of occasions to discuss the protection of intellectual property in the Asia-Pacific region. This ad hoc group is moving forward on a number of collective actions, one of which is the creation of a contact point list of public and private sector individuals from APEC economies engaged in the area of intellectual property rights. This list will be placed on the Internet in early 1997, and is intended to allow persons working in this field to identify each other easily and, as appropriate, to contact each other. The list will be divided into public sector and private sector sections, and may be further divided into intellectual property subject matter areas.

All interested persons, from academia to industry, are invited to submit written applications for inclusion on the Contact Point List. An original and three copies of the application should be sent to Sybia Harrison at the above-noted address on or before September 16, 1996. Applications must be in English and take the following form:

Name:
Title:
Area(s) of interest (e.g., patents, copyrights, trademarks, etc.):
Address:
Telephone/Fax numbers:

When forwarding these applications to APEC for inclusion on the Contact Point List, the United States Government will clarify that it does not vouch for the accuracy of the information submitted or the qualifications of the individuals identified.

Irving Williamson,

Deputy General Counsel.

[FR Doc. 96–20674 Filed 8–13–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Operating Administrations, DOT.

ACTION: Notice.

SUMMARY: Notice to amend and delete systems of records.

EFFECTIVE DATE: August 14, 1996.

ADDRESSES: Send Comments to the Privacy Act Officer, U.S. Department of Transportation, 400 7th St., SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Crystal Bush at (202) 366–9713.

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the above mentioned address.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, and is published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

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SYSTEM NAME:

Station Message Detail Recording (SMDR).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Transportation, Transportation Administrative Service Center, Telecommunications Operations, SVC–171, PL–300, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Transportation employees who make Federal Telecommunications Systems (FTS) and Domestic and International Commercial Long Distance calls from the three Headquarters Buildings: The Nassif and Transpoint Buildings and Federal Building-10A.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of the Department's administrative telephones to place FTS and Commercial Long Distance calls, records indicating assignment of telephone numbers to Departmental employees, and records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322.

PURPOSE(S):

To track usage of DOT telephones to place FTS and Commercial Long Distance calls, records indicating assignment of telephone numbers to Departmental employees, and records relating to the location of telephones.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape storage via batch processing and paper copy.

RETRIEVABILITY:

Records are retrieved by telephone number or routing symbol, from the telecommunications contacts in the Operating Administrations and the Telecommunications Operations Branch.

SAFEGUARDS:

Only telecommunications personnel within the Transportation Administrative Service Center (TASC) and operation and maintenance contract personnel have access to tapes. Telecommunications contacts and managers in TASC and the Operating Administrations will have access to printed records. Printed records will have a cover sheet indicating Privacy Act coverage.

RETENTION AND DISPOSAL:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Operations Division, U.S. Department of Transportation, 400 Seventh Street SW., SVC–171, PL–300, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Contact Telecommunications Operations Division, SVC–171 at the above address.

RECORD ACCESS PROCEDURES:

Contact Telecommunications Operations Division, SVC–171 at the above address.

Individuals may review their own data upon presentation of a valid Department of Transportation identification card to their Operating Administration contact or the Telecommunications Operations Division.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings and results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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SYSTEM NAME:

Employee Assistance Program (EAP) Records.

SYSTEM CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

Records are maintained in the office of the EAP which provides counseling to the employee.

Note: In order to meet the statutory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug programs, and to better accommodate establishment of a health service program to promote employees' physical and mental fitness, it may be necessary for the Department of Transportation (DOT) to negotiate for use of the counseling staff of another Federal, state, or local government, or private sector agency or institution. This system also covers records on DOT employees that are maintained by another Federal, state, or local government, or private sector agency or institution under such a negotiated agreement.

With the exception of Federal Aviation Administration (FAA), Saint Lawrence Seaway Development Corporation (SLSDC), New York (NY) area and the United States Coast Guard (USCG), records of DOT employees are maintained by the Department of Health and Human Services-Public Health Service. Records of FAA employees are maintained by Merit Behaviorial Care, records of SLSDC, NY area are maintained by Saint Lawrence County Community EAP Service and records of the USCG are maintained by Masshoff, Barr, and Associates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, state, local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Additionally, records in this system may include documentation of names of employees on referral, rehabilitation and follow-up lists kept by DOT EAP Coordinators, treatment by a private therapist or a therapist at a Federal, state, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 4561, and 44 U.S.C. 3101.

PURPOSE(S):

These records are used to document the referral, nature of the individual's problem and progress made to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs and related follow-up.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information without written consent to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOT, all patient identifying information shall be removed).

b. To disclose information without written client consent, when an individual to whom a record pertains is mentally incompetent or under legal disability, to any person who is responsible for the care of the individual.

c. To disclose information without written consent to the Department of Justice that is relevant and necessary to evaluate and defend claims against the United States that are based upon participation in alcohol, drug, or other treatments or rehabilitation programs conducted by DOT.

DOT's general routine uses (49 FR 15345) do not apply to this system or records. These are the only routine uses provided for DOT's Employee Counseling Services Program records. Furthermore, in many instances a full disclosure of the contents of the record is not required. Whenever possible, a partial disclosure will be made or a summary of the contents of the record will be disclosed. Full disclosure of the record will be made only when a partial disclosure or a summary will not suffice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are electronic and paper files maintained on computers and in file folders.

RETRIEVABILITY:

These records are retrieved by the name or social security number of the individual on whom they are maintained or by a unique case file identifier.

SAFEGUARDS:

These records are maintained in locked file cabinets and computers with access protected by electronic password. Access is strictly limited to employees directly involved in the DOT's EAP.

RETENTION AND DISPOSAL:

Records are maintained for three to six years after the employee's last contact with DOT's EAP.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Worklife Wellness, U.S. Department of Transportation, 400 7th Street, SW., SVC–100, Room 9136, Washington, DC 20590.

NOTIFICATION PROCEDURE:

DOT employees wishing to inquire whether this system of records contains information about them should contact the DOT EAP coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

DOT employees wishing to request access to records pertaining to them should contact the DOT EAP coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR part 10).

CONTESTING RECORD PROCEDURES:

DOT employees wishing to request amendment to these records should contact the DOT EAP coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR part 10).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the Supervisor, the EAP Coordinator who tracks the referral, rehabilitation progress and follow-up, the EAP staff member who records the counseling session, and therapists or institutions providing treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 7

SYSTEM NAME:

Departmental Accounting and Financial Information System (DAFIS).

SYSTEM CLASSIFICATION:

Unclassified sensitive.

SYSTEM LOCATION:

The system is located in the Department of Transportation (DOT) accounting offices and selected program, policy, and budget offices. These offices are located within the Bureau of Transportation Statistics (BTS), the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the Maritime Administration (MARAD), the National Highway Traffic Safety Administration (NHTSA), the Office of Inspector General (OIG), the Office of the Secretary (OST), the Research and Special Programs Administration (RSPA), the Surface Transportation Board (STB), the Transportation Administrative Services Center (TASC), and the United States Coast Guard (USCG). These offices exercise system and operational control over applicable records within the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will cover: All employees of the BTS, FAA, FHWA, FRA, FTA, MARAD, NHTSA, OIG, OST, RSPA, STB, TASC, and civilian USCG employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories include payment records for non-payroll related expenses, payment records for payroll made off-line, collection records for payroll offsets, and labor cost records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512 (A),(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Accounting office personnel use these records to:

Provide employees with off-line paychecks, travel advances, travel reimbursements, and other official reimbursements;

Facilitate the distribution of labor charges for costing purposes;

Track outstanding travel advances, receivables, and other non-payroll amounts paid to employees, etc; and,

Clear advances that were made through the system in the form of off-line paychecks, payments for excess household goods made on behalf of the employee, garnishments, overdue travel advances, etc.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, magnetic disk, microforms, and in file folders.

RETRIEVABILITY:

Records are retrieved by employee social security number. Retrieval is accomplished by use of telecommunications.

SAFEGUARDS:

Access to magnetic tape and disk records is limited to authorized agency personnel through password security. Hardcopy files are accessible to authorized personnel and are kept in locked file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Original payment vouchers and supporting documentation are retained on site at the accounting office for a period of three years. After three years, records are sent to GSA's Records Centers for storage. Records are retained in accordance with the General Records Schedule. Certain transportation documents (i.e., Government Transportation Requests, Government Bills of Lading) are forwarded to the General Service Administration for audit during the period that documents are retained by the accounting office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Systems (B–35) at the following address: U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the system manager.

RECORD ACCESS PROCEDURES:

Same as ''System Manager.''

CONTESTING RECORD PROCEDURES:

Same as ''System Manager.'' Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claims.

RECORD SOURCE CATEGORIES:

Information is provided by the employee directly or through the DOT Integrated Personnel and Payroll System (IPPS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 11

SYSTEM NAME:

Integrated Personnel and Payroll System (IPPS).

SECURITY CLASSIFICATION:

Unclassified sensitive.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), 400 7th Street, SW, Washington, DC 20590;

working copies of certain of these records are held by OST, all DOT Operating Administrations, Office of the Inspector General (OIG), and the National Transportation Safety Board (NTSB). (DOT provides personnel and payroll services to NTSB on a reimbursable basis, although NTSB is not a DOT entity. This is done for economy and convenience since both organizations' missions are transportation oriented and located in the same geographic areas.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, present, and former employees in the Office of the Secretary of Transportation (OST), Bureau of Transportation Statistics (BTS), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), National Highway Traffic Safety Administration (NHTSA), Office of the Inspector General (OIG), Research and Special Programs Administration (RSPA), St. Lawrence Seaway Development Corporation (SLSDC), Transportation Administrative Service Center (TASC), National Transportation Safety Board (NTSB), and civilian employees of the United States Coast Guard (USCG).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains those records required to insure that an employee receives his or her pay and personnel benefits as required by law. It includes, as appropriate: Service Record, Employee Record, Position Identification Strip, Claim for 10-Point Veteran Preference, Request for Referral Eligibles, Request and Justification for Selective Factors and Quality Ranking Factors, Certification of Insured Employee's Retired Status (Federal Employees' Group Life Insurance (FEGLI)), Notification of Personnel Action, Notice of Short-Term Employment, Request for Insurance (FEGLI), Designation of Beneficiary (FEGLI), Notice of Conversion Privilege, Agency Certification of Insurance Status (FEGLI), Request for Approval of Non-Competitive Action, Appointment Affidavits, Declaration of Appointee, Agency Request to Pass Over a Preference Eligible or Object to an Eligible, Official Personnel Folder, Official Personnel Folder Tab Insert, Incentive Awards Program Annual Report, Application for Leave, Monthly Report of Federal Civilian Employment, Payroll Report of Federal Civilian Employment, Semi-annual Report of Federal Participation in Enrollee Programs, Request for Official Personnel Folder (Separated Employee), Statement of Prior Federal Civilian and Military Service, Personal Qualifications Statement, Continuation Sheet for Standard Form 171 ''Personal Qualifications Statement'', amendment to Personal Qualifications Statement, Job Qualifications Statement, Statement of Physical Ability for Light Duty Work, Request, Authorization, Agreement and Certification for Training, United States (U.S.) Government Payroll Savings Plan-Consolidated Quarterly Report, Financial Disclosure Report, Information Sheet-Financial Disclosure Report, Payroll for Personal Services, Pay Receipt for Cash Payment—Not Transferable, Payroll Change Slip, Payroll for Personal Service—Payroll Certification and Summary—Memorandum, Record of Leave Data, Designation of Beneficiary—Unpaid Compensation of Deceased Civilian Employee, U.S. Savings Bond Issue File Action Request, Subscriber List for Issuance of United States Savings Bonds, Request for Payroll Deductions for Labor Organization Dues, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Labor Organization dues, Request by Employee for Payment of Salaries or Wages by Credit to Account at a Financial Organization, Designation of Beneficiary—Unpaid Compensation of Deceased Civilian Employee, U.S. Savings Bond Issue File Action Request, Subscriber List for Issuance of United States Savings Bonds, Request for Payroll Deductions for Labor Organization Dues, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Labor Organization Dues, Request by Employee for Payment of Salaries or Wages by Credit to Account at a Financial Organization, Authorization for Purchase and Request for Change: U.S. Series EE Savings Bond, Request by Employee for Allotment of Pay for Credit to Savings Accounts with a Financial Organization, Application for Death Benefits—Civil Service Retirement System, Application for Retirement—Civil Service Retirement System, Superior Officer's Statement in Connection with Disability Retirement, Physician's Statement for Employee Disability Retirement Purposes, Transmittal of Medical and Related Documents for Employee Disability Retirement, Request for Medical Records (To Hospital or Institution) in Connection with Disability Retirement, Application for Refund of Retirement Deductions, Application to Make Deposit or Redeposit, Application to Make Voluntary Contribution, Request for Recovery of Debt Due the United States (Civil Service Retirement System), Register of Separations and Transfers—Civil Service Retirement System, Register of Adjustments—Civil Service Retirement System, Annual Summary Retirement Fund Transactions, Designation of Beneficiary—Civil Service Retirement System, Health Benefits Registration Form-Federal Employees Health Benefits Program, Notice of Change in Health Benefits Enrollment, Transmittal and Summary Report to Carrier—Federal Employees Health Benefits Program, Report of Withholding and Contributions for Health Benefits, Group Life Insurance, and Civil Service Retirement, Report of Withholdings and Contributions, Employee Service Statement, Election of Coverage and Benefits, Designation of Beneficiary, Position Description, Inquiry for United States Government Use Only, Application for Retirement—Foreign Service Retire System, Designation of Beneficiary, Application for Refund of Retirement Contributions (Foreign Service Retirement System), Election to Receive Extra Service Credit Towards Retirement (or Revocation Thereof), Application for Service Credit, Employee Suggestion Form, Meritorious Service Increase Certificate, Foreign Service Emergency Locator Information, Leave Record, Leave Summary, Individual Pay Card, Time and Attendance Report, Time and Attendance Report (For Use Abroad).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C 322

PURPOSE(S):

This system integrates personnel and payroll functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are maintained for control and accountability of: Pay and allowances; permanent and temporary pay changes; pay adjustments; travel advances and allowances; leave balances for employees; earnings and deductions by pay periods, and pay and earning statements for employees; management information as required on an ad hoc basis; payroll checks and bond history; union dues; withholdings to financial institutions, charitable organizations and professional associations; summary of earnings and deductions; claims for reimbursement sent to the General Accounting Office (GAO); federal, state, and local taxes

withholdings; and list of FICA employees for management reporting. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 USC 552a(b)(12): Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 USC 1681a(f)) or the Federal Claims Collection Act of 1982 (31 USC 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage is on magnetic disks, magnetic tape, microforms, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by social security number, employee number, organization code, or home address; these can be accessed only by individuals authorized such access.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. Data are manually and/or electronically stored in locked rooms with limited access.

RETENTION AND DISPOSAL:

The IPPS records are retained and disposed in compliance with the General Records Schedules, National Archives and Records Administration, Washington, DC 20408. The following schedules apply: General Records Schedule 1, Civilian Personnel Records, Pages 1 thru 22, Items 1 through 39; and General Records Schedule 2, Payrolling and Pay Administration Records, Pages 1 thru 6, Items 1 thru 28.

SYSTEM MANAGER(S) AND ADDRESS:

For personnel-related issues, contact Chief, Strategic Planning/Systems Division (M–10) and, for payroll-related issues, contact Chief, Financial Management Staff (B–35) at the following address: U.S. Department of Transportation, Office of the Secretary, 400 Seventh Street SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the system manager.

RECORD ACCESS PROCEDURES:

Same as ''System Manager''.

CONTESTING RECORD PROCEDURES:

Same as ''System Manager''. Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claims.

RECORD SOURCE CATEGORIES:

Data are collected from the individual employees, time and attendance clerks, supervisors, official personnel records, personal financial statements, correspondence with the debtor, records relating to hearings on the debt, and from the Departmental Accounting and Financial Information System system of records.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOT/OST 043

SYSTEM NAME:

Telephone Directory and Locator System.

SECURITY CLASSIFICATION:

Unclassified sensitive.

SYSTEM LOCATION:

Department of Transportation, ATTN: SVC–171, Telecommunications Operations Division, 400 7th Street SW, Washington, DC 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Transportation (DOT) headquarters employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetic Employee Master Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322.

PURPOSE(S):

To provide the names, telephone numbers, and office locations of DOT employees and organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Departmental Alphabetic Directory production, DOT Mail Room, DOT Locator Service. Used by DOT Telephone Directory Representatives, DOT Mail room. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Public document that can be received from the Government Printing Office

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape storage via batch processing. Source data returned to DOT.

RETRIEVABILITY:

Can retrieve on telephone number or on name.

SAFEGUARDS:

Only DOT and its support contractor personnel have access to tapes.

RETENTION AND DISPOSAL:

Tapes are retained through three (3) cycles, grandfather, father, son, and then scratched. Source materials are retained until the next update is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Operations Division, ATTN: SVC–171, Department of Transportation, Office of the Secretary, Office of Administrative Services, 400 7th Street, SW, Room PL–300, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Contact the Telecommunications Operations Division at the address above.

RECORD ACCESS PROCEDURES:

Contact the Telecommunications Operations Division at the address above.

Individual may review own data upon presentation of valid DOT ID card.

CONTESTING RECORD PROCEDURES:

Individual may change own data at any time.

RECORD SOURCE CATEGORIES:

DOT F 1700.1—DOT Form prepared for each employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Deletions

System number	System name
DOT/ALL 3	Application for U.S. Government Motor Vehicle Operator's Identification Card (Government Drivers License).
DOT/FAA 806 ...	Federal Aviation Administration Employee Payable System.
DOT/FAA 831 ...	Standard Procedure Uniform Reporting System (SPUR).
DOT/FAA 832 ...	Pilot/Flight Engineer/Navigator Flight Record System.
DOT/FAA 849 ...	Back to Basics Seminar Attendance System.

System number	System name
DOT/FHWA 202	University and Industry Programs Coding and Filing System.
DOT/FHWA 210	Occupational Safety and Health Accident Reporting System.
DOT/FHWA 219	Employee Utilization (monthly report).
DOT/FHWA 220	Payroll Administration.
DOT/FRA 100	Alaska Railroad Examination of Operating Personnel.
DOT/FRA 101	Alaska Railroad Personnel and Pay Management Information System.
DOT/FRA 118	Transportation Test Center Cost Tracking System.
DOT/NHTSA 400.	National Highway Safety Advisory Committee Membership/Nominee Files.
DOT/NHTSA 404.	Alcohol Project Files.
DOT/NHTSA 433.	Injuries, Illnesses, Motor Vehicle Accidents and Property Damages.
DOT/NHTSA 434.	Government Driver Licenses.
DOT/NHTSA 447.	Drinking Driver Tracking System.
DOT/NHTSA 454.	Alcohol Behavior Research.
DOT/NHTSA 459.	Stockton Increased DUI Enforcement/DUI Citation and Arrest File.
DOT/NHTSA 467.	Driver Programs Data System.
DOT/OST 010	Departmental Personnel Management Information System.
DOT/OST 018	Identification Media Record Systems.
DOT/OST 026	Payroll Management System.
DOT/OST 030	Personnel Management Files.
DOT/OST 044	Travel and Transportation Management File.
DOT/OST 062	Biographies of Key Officials Book.
DOT/RSPA 01	Funds Management Records.
DOT/RSPA 07	Time and Attendance Report (FHWA Form 320 (7–73)) for the Office of Emergency Transportation.
DOT/TSC 706	Automated Planning System.
DOT/TSC 711	Blood Donor Information File.
DOT/TSC 713	Employee—Manpower Distribution System.
DOT/UMTA 176	Blood-Donor File.
DOT/UMTA 192	Federal Transportation Planning System (UTPS) Address File.

Dated: August 8, 1996.

Crystal M. Bush,

Privacy Act Coordinator, Department of Transportation.

[FR Doc. 96–20738 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Advisory Circular 183–35G, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 183–35G, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36, for review and comments. The proposed AC 183–35G draft provides a revised list of authorized functions for designees/representatives. The revised function list provides additional authorized function codes for private persons acting on behalf of the administrator.

DATES: Comments submitted must identify the proposed AC 183–35G, and must be received on or before September 13, 1996.

ADDRESSES: Copies of the proposed AC 183–35G can be obtained from and comments may be returned to the following: Federal Aviation Administration; Designee Standardization Branch, AFS–640, Regulatory Support Division, ATTN: Evangeline Raines, AFS–640, P.O. Box 25082, Oklahoma City, OK 73125.

FOR FURTHER INFORMATION CONTACT: John Rice, Designation Standardization Section, AFS–641, at the above address; telephone (405) 954–6484, (8:00 a.m. to 5:00 p.m. CST).

SUPPLEMENTARY INFORMATION:

Background

The Designee Standardization Branch, AFS–640 intends to cancel AC 183–33A, DESIGNATED AIRWORTHINESS REPRESENTATIVES. AFS–640 has revised AC 183–35F, FAA DAR, DAS, DOA, AND SFAR PART 36 DIRECTORY, to reflect the expanded authorized functions. This revised advisory circular will be published one time only in the Federal Registry as AC 183–35G, AIRWORTHINESS DESIGNEE FUNCTION CODES AND CONSOLIDATED DIRECTORY FOR DAR/DOA/DAS AND SFAR NO. 36 to seek public comment.

Interested persons are invited to comment on the proposed AC 183–35G listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Manager, Regulatory Support Division, before issuing the final AC.

Comments received on the proposed AC 183–35G may be examined before and after the comment closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 and 4:30 p.m.

Billy Pickelshimer,

Acting Manager, Regulatory Support Division.

[FR Doc. 96–20583 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 9, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 21882
Petitioner: China Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.77 (a) and (b) and 63.23 (a) and (b)
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 4849, as amended, which permits China Airlines, Inc., airmen who operate two U.S.-registered Boeing 747–SP aircraft (Registration Nos. N4508H and N4522V) and an Airbus 300–600R aircraft (Registration No. N88881) to be eligible for special purpose airman certificates. The amendment adds a second Airbus 300–600R (Registration No. N88887) to the list of aircraft that may be operated under this exemption.
Grant, July 23, 1996, Exemption No. 4849E

Docket No.: 27930
Petitioner: Pan Am International Flight Academy
Sections of the FAR Affected: 14 CFR appendix H to part 121; 135.337 (a)(2) and (3) and (b)(2); and 135.339 (b) and (c)
Description of Relief Sought/ Disposition: To permit certain flight instructors (simulator) employed by the Pan Am International Flight Academy and listed in a part 135 certificate holder's approved training program to act as flight instructors (simulator) for that certificate holder under part 135 without those flight instructors (simulator) having received ground and flight training in accordance with that certificate holder's training program approved under subpart H of part 135.
Partial Grant, July 3, 1996, Exemption No. 6479

Docket No.: 28333
Petitioner: CCAIR, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F to part 121
Description of Relief Sought/ Disposition: To permit CCAIR, Inc., to conduct a single-visit training program (SVTP) for flight crewmembers and eventually transition into the Advanced Qualification Program (AQP) codified in SFAR No. 58.
Grant, July 9, 1996, Exemption No. 6478

Docket No.: 28547
Petitioner: Dale Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)
Description of Relief Sought/ Disposition: To permit Dale Aviation, Inc., to operate its Cessna 414A aircraft (Registration No. N414YH, Serial No. 414A0514) without a TSO–C112 (Mode S) transponder installed.
Grant, June 27, 1996, Exemption No. 6472

Docket No.: 28572
Petitioner: Mr. Mark Quinn
Sections of the FAR Affected: 14 CFR 91.197(a)(3) and 121.311(b)
Description of Relief Sought/ Disposition: To permit Mr. Quinn not to purchase a passenger seat on a commercial airline for his daughter, Sarah, who was born with Down Syndrome and other birth defects on a commercial airliner for Sarah, who has reached her second birthday. The petitioner proposed that Sarah be held on her caregivers lap, rather than being secured in an approved child restraint device or in an individual seat with a seatbelt.
Denial, July 9, 1996, Exemption No. 6479

[FR Doc. 96–20754 Filed 8–13–96; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–96–40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and for dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 9, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 9, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28619
Petitioner: F.S. Air Service, Inc.
Sections of the FAR Affected: 14 CFR 135.267 (b)(2) and (c) and 135.269(b)(2), (3), and (4)
Description of Relief Sought: To permit F.S. Air Service, Inc., to assign its flight crewmembers and allow its flight crewmembers to accept a flight assignment of up to 16 hours of flight time during a 20-hour duty day for the purpose of conducting international emergency medical evacuation operations.

Dispositions of Petitions

Docket No.: 27609
Petitioner: M. Shannon & Associates
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2)
Description of Relief Sought/ Disposition: To permit M. Shannon & Associates and the operators of Cessna Citation 500, 550, and S550 model aircraft to operate these aircraft with a single pilot.
Grant, July 18, 1996, Exemption No. 6480

Docket No.: 28454
Petitioner: Civil Air Patrol
Sections of the FAR Affected: 14 CFR part 91, subpart F
Description of Relief Sought/ Disposition: To permit the Civil Air Patrol (CAP) to operate a limited number of CAP flights carrying passengers and property for limited

reimbursement when those flights are within the scope of and incidental to CAP's corporate purposes and U.S. Air Force Auxiliary.

Grant, July 22, 1996, Exemption No. 6485

Docket No.: 28573

Petitioner: Federal Aviation Administration, Office of Aviation System Standards

Sections of the FAR Affected: 14 CFR 135.251 and 135.255(a)

Description of Relief Sought/ Disposition: To permit the Office of Aviation System Standards (AVN) to use the drug and alcohol testing program mandated by Department of Transportation (DOT) Order 3910.1C, ''The Drug and Alcohol-Free Departmental Workplace,'' for its Flight Inspection Program management, pilot, and maintenance personnel, in lieu of the drug and alcohol testing programs mandated by the Federal Aviation Regulations (FAR).

Grant, July 31, 1996, Exemption No. 6484

Docket No.: 28630

Petitioner: Katie Seddon

Sections of the FAR Affected: 14 CFR 121.311(b)

Description of Relief Sought/ Disposition: To permit Katie, who is 12 years old, to be held on the lap(s) of one or both of her parents, using an infant lap restraint rather than being secured in an approved child restraint device or in an individual seat with a seatbelt while traveling on an air carrier certificated under part 121.

Grant, July 24, 1996, Exemption No. 6486

[FR Doc. 96–20755 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key Field Airport, Meridian, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Tom Williams, Executive Director of the Meridian Airport Authority at the following address: Post Office Box 4351, 2811 Highway 11 South, Meridian, Mississippi 39304–4351.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Meridian Airport Authority under 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 2, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Meridian Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1996.

The following is a brief overview of the application.

PFC Application Number: 96–03–C–00–MEI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: 11–1–92.

Proposed charge expiration date: 10–31–2000.

Total estimated net PFC revenue: $528,343.

Estimated PFC revenues to be used on projects in this application: $250,620 Brief description of proposed projects: Storm sewer rehabilitation; Emergency communication equipment; Upgrade gate entry keypad stations; Taxiway C overlay; Taxiway B overlay; Terminal ramp overlay.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Meridian Airport Authority.

Issued in Jackson, Mississippi, on August 2, 1996.

Elton E. Jay,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 96–20760 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at McGhee Tyson Airport, Knoxville, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at McGhee Tyson Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Terry Igoe, Executive Director of the Metropolitan Knoxville Airport Authority at the following address: P.O. Box 15600, Knoxville, Tennessee.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Knoxville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Airports Area Representative, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–

0301, 901–544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to: impose and use the revenue from a PFC at McGhee Tyson Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 8, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Knoxville Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the supplemented application, in whole or in part, no later than November 9, 1996.

The following is a brief overview of the application.

PFC application number: 96–02–C–00–TYS.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: April 1, 1997.

Total estimated PFC revenue: $530,000.

Brief description of proposed project: Program Work Element 1 will reimburse the Metropolitan Knoxville Airport Authority for replacement of electrical conduits, cables, equipment and fixtures for taxiway A. This work was necessary to support the additional electrical loads imposed by new airfield guidance signs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non Scheduled operations by Air Taxi/Commercial operators operating under Part 135.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Knoxville Airport Authority, McGhee Tyson Airport.

Issued in Memphis, Tennessee on August 8, 1996.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 96–20758 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–04–U–00–PDX) to Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport, Submitted by the Port of Portland, Portland, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at Portland International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suit 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Haynes, at the following address: Port of Portland, 7000 N.E. Airport Way, Portland, OR 97218.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (202)227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–04–U–00–PDX) to use PFC revenue at Portland International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 6, 1996, the FAA determined that the application to use the revenue from a PFC submitted by Portland International Airport, Portland, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: November 1, 1994.

Proposed charge expiration date: August 31, 1999.

Total requested for use approval: $203,000.00.

Brief description of proposed project: Taxiway GA Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: The carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. ''Air Taxi/Commercial Operator'' shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the Airport, ferry or training flights, aerial photography or survey charters, and fire fighting charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Airport.

Issued in Renton, Washington on August 6, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–20759 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-Cities Regional Airport, TN/VA, Blountville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application impose and use the revenue

from a PFC at Tri-Cities Regional Airport, TN/VA under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 13, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John E. Hanlin, Executive Director of the Tri-Cities Regional Airport at the following address: Tri-Cities Airport Commission, P.O. Box 1055, Highway 75, Blountville, TN 37617.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-Cities Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Michael L. Thompson, 2851 Directors Cove, Suite 3, Memphis, TN 38131–0301; Phone 901/544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-Cities Regional Airport, TN/VA under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On August 8, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tri-Cities Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 8, 1996.

The following is a brief overview of the application.

PFC application number: 96–01–C–99–TRI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1997.

Proposed charge expiration date: February 1, 2009.

Total estimated PFC revenue: $8,476,249.

Brief description of proposed project(s): Extend Runway 5 Safety Area, Terminal Improvements, General Aviation Airfield Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators operating under Part 135.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-Cities Airport Commission.

Issued in Memphis, Tennessee on August 8, 1996.

LaVerne Reid,

Manager, Airports District Office.

[FR Doc. 96–20757 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 1996, there were 10 applications approved. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Walker Field Airport Authority, Grand Junction, Colorado.

Application Number: 96–02–U–00–GJT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Approved FPC Revenue to be Used in this Application: $267,000.

Charge Effective Date: April 1, 1993.

Estimated Charge Expiration Date: March 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved For Use: Rehabilitate taxiway A, Install fencing, Install precision approach path indicator, runway 11, Install visual approach descent indicators and runway end identifier lights, runway 4/22, Rehabilitate runway 4/22.

Decision Date: July 2, 1996.

For Further Information Contact: Christopher Schaffer, Denver Airports District Office, (303) 286–5525.

Public Agency: County of Marquette, Marquette, Michigan.

Application Number: 96–03–C–00–MQT.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Application: $32,500.

Estimated Charge Effective Date: October 1, 1996.

Estimated Charge Expiration Date: December 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/charter operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Marquette County Airport.

Brief Description of Project Approved for Collection and Use: Acquire snow removal equipment.

Decision Date: July 2, 1996.

For Further Information Contact: Jon Gilbert, Detroit Airports District Office, (313) 487–7281.

Public Agency: Horry County Department of Airports, Myrtle Beach, South Carolina.

Application Number: 96–91–C–00–MYR.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $13,819,500.

Estimated Charge Effective Date: October 1, 1996.

Estimated Charge Expiration Date: July 1, 2005.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled operations by air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Myrtle Beach International Airport.

Brief Description of Projects Approved for Collection and Use: Air Carrier apron infield expansion, South apron expansion, Federal Inspection Station, Terminal A renovation, Land acquisition, Preparation of PFC application, PFC administrative costs.

Decision Date: July 9, 1996.

For Further Information Contact: D. Cameron Bryan, Atlanta Airports District Office, (404) 305–7144.

Public Agency: County of Gregg, Longview, Texas.

Application Number: 96–01–C–00–GGG.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $472,571.

Estimated Charge Effective Date: September 1, 1996.

Estimated Charge Expiration Date: January 1, 2001.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use of PFC Revenue: Terminal apron improvements—unit 2, Runway 13/31 overlay and miscellaneous improvements, Airport master plan, Guidance sign improvements, Terminal apron improvements—unit 3, Runway 17/35 rehabilitation, 1,000 gallon aircraft rescue and firefighting (ARFF) vehicle.

Decision Date: July 9, 1996.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Helena Regional Airport Authority, Helena, Montana.

Application Number: 96–02–U–00–HLN.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Net PFC Revenue To Be Used in This Application: $130,026.

Charge Effective Date: April 1, 1993.

Estimated Charge Expiration Date: September 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Runway 9/27 overlay.

Decision Date: July 16, 1996.

For Further Information Contact: David Gabbert, Helena Airports District Office, (406) 449–5271.

Public Agency: County of Chautauqua, Jamestown, New York.

Application Number: 96–02–U–00–JHW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Net PFC Revenue To Be Used in This Application: $156,412.

Charge Effective Date: June 1, 1993.

Estimated Charge Expiration Date: February 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use: Overlay runway 7/25, Obstruction removal, phase 2, Reconstruct entry road.

Decision Date: July 16, 1996.

For Further Information Contact: Philip Brito New York Airports District Office, (516) 227–3803.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 96–05–C–00–CMH.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Application: $9,437,955.

Estimated Charge Effective Date: November 1, 1996.

Estimated Charge Expiration Date: November 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Port Columbus International Airport.

Brief Description of Project Approved for Collection and Use: Runway 10L/28R improvements.

Decision Date: July 16, 1996.

For Further Information Contact: Mary W. Jagiello, Detroit Airports District Office, (313) 487–7296.

Public Agency: Port of Oakland, Oakland, California.

Application Number: 96–06–C–00–OAK.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue in This Application: $4,063,541.

Estimated Charge Effective Date: February 1, 1997.

Estimated Charge Expiration Date: May 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators exclusively filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Metropolitan Oakland International Airport.

Brief Description of Project Approved for Collection and Use: Seismic upgrade of building M101, Construct second jetway at the International Arrivals building, Purchase two 3,000 gallon ARFF trucks, Overlay runway 27L/9R.

Brief Description of Project Approved in Part for Collection and Use: Replace normal power breakers in building M102.

Determination: Approved in part. This project is generally eligible under Airports Improvement Program (AIP) criteria, paragraph 568 of FAA Order 5100.38A, AIP Handbook. However, as stated in paragraph 568, the allowable cost of utilities will be prorated between the eligible and ineligible areas or facilities served by these utilities. If the prorated share of the costs for those utilities serving eligible areas or facilities is less than the approved amount shown above, the Port of Oakland will take immediate steps to amend this approval to decrease the PFC revenue available for this project.

Brief Description of Disapproved Project: Upgrade M104 switchgear.

Determination: Disapproved. The majority of the loads using these switchgears proposed for replacement were determined to be ineligible under AIP criteria, paragraph 568 and Appendix 2 of FAA Order 5100.38A, AIP Handbook. In addition, the Port of Oakland included a provision for spare breakers which are considered a maintenance item and, thus, are also ineligible under AIP criteria, paragraph 501 of FAA Order 5100.38A. Therefore, the project does not meet the requirements of § 158.15(b)(1) and is disapproved.

Decision Date: July 23, 1996.

For Further Information Contact: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: City of Modesto, California.

Application Number: 96–03–U–00–MOD.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Net PFC Revenue To Be Used in This Application: $22,606.

Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: August 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use of PFC Revenue: Runway 10L/28R holding bays.

Decision Date: July 31, 1996.

For Further Information Contact: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 96–09–U–00–CHO.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Net PFC Revenue To Be Used in This Application: $61,566.

Charge Effective Date: April 1, 1995.

Estimated Charge Expiration Date: August 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decisions.

Brief Description of Project Approved for Use of PFC Revenue: Overlay runway 3/21.

Decision Date: July 31, 1996.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Amended approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–CPR, Casper, WY	01/20/95	$693,974	$506,144	10/01/96	03/01/97
92–01–I–02–MQT, Marquette, MI	04/25/96	446,200	458,700	04/01/96	04/01/96
94–01–C–02–AVL, Asheville, NC	06/14/96	5,645,711	5,645,711	06/01/01	06/01/01
94–01–C–01–SLC, Salt Lake City, UT	06/17/96	65,177,790	99,230,800	05/01/98	03/01/99
92–01–C–01–GFK, Grand Forks, ND	06/24/96	796,468	1,016,509	02/01/97	05/01/96
92–01–C–01–CAK, Akron, OH	06/26/96	3,594,000	2,558,851	08/01/96	11/01/96
92–01–C–03–MSO, Missoula, MT	07/03/96	2,049,300	2,905,937	09/01/97	01/01/98
92–01–C–01–HLN, Helena, MT	07/03/96	1,056,190	962,829	12/01/99	09/01/99
93–01–C–03–MDW, Chicago, IL	07/11/96	72,910,908	81,371,107	07/01/07	12/01/09
95–03–C–01–MDW, Chicago, IL	07/11/96	11,916,250	46,419,783	07/01/07	12/01/09

Issued in Washington, D.C. on August 7, 1996.

Donna P. Taylor,

Manager, Passenger Facility Charge Branch.

[FR Doc. 96–20753 Filed 8–13–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Commercial Invoices

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Commercial Invoices. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before October 15, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 6216, 1301 Constitution Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: The newly proposed International Trade Data System (ITDS) is being designed to integrate the different government trade and transportation data collection processes to provide a standard means of gathering, processing, storing, and disseminating import and export trade data. Agencies would share data as needed to support their individual agency mission while maintaining agency specific information in their own files. As envisioned, the system would provide for the electronic exchange of declarations, foreign and domestic issued licences and other documents required of trading parties based on commercial data. For example, it would allow for interagency notice of licensing and permitting decisions, and accommodate the decrementing of licenses, while allowing control of the license and permit issuing processes to be maintained by responsible agencies. To accommodate a constantly changing economic and geopolitical world, the system would be designed for flexibility and easy modification, so that new trade laws and regulations requirements would be more easily incorporated into the integrated data system. A very important part of the ITDS would be to provide a convenient entry point for business to provide international trade data to all agencies needing to be involved in a transaction. Importers and exporters would only have to provide the information once and it would be routed among the appropriate agencies. As an example: importers would not have to file identical information on a CF 7501 Form with Customs, an FDA Form 701 with FDA, an HS7 Form with the Department of Transportation or an EPA 35201 Form with the Environmental Protection Agency. Names, addresses, descriptions, classifications, serial numbers would have to be provided only once and the information would be provided to all appropriate agencies. The data system would also standardize trade and transportation data for both imports and exports based on the information normally established among trading partners in the customary conduct of business. Such elements as commercial descriptions and quantifies, names and addresses of parties to shipments, and departure and arrival locations, all of which are part of normal commercial information would be defined so that they mean the same thing to all users.

Standard definitions of terms, standard codes and abbreviations for countries, goods and conveyance modes and shipment identifiers would simplify procedures and help streamline processes. The system would use a recognized standard, such as United Nations/Electronic Data Interface for Administration, Commerce, and Transportation (UN/EDIFACT).

Those additional data elements necessary for monitoring specific goods would be added to the commercial level record of the ITDS and made available to the applicable agency or agencies. By standardizing the data collected and by eliminating duplicate data, agencies would be able to integrate many of their present systems for selecting and targeting potentially violative shipments and thus provide more efficient and enforcement of trade statutes and regulations. Improved analysis of trade and transportation flow and trends would also enhance trade promotion

activities and provide a better basis for establishing and negotiating international trade policy. Aggregate level trade data would be available established distribution channels to U.S. businesses and the general public.

The trade promotion component of the ITDS would provide information on both exporting and importing to the international trade community. By using the Department of Commerce's National Trade Data Bank, the system would provide user friendly electronic access to basic export and import information, market research reports, overseas contacts, duty rates, and information on international financial assistance. Reference materials such as U.S. Export Regulations, Customs Regulations, and an International Trade Terms Directory would be available online. A guide to U.S. agencies involved in international trade would also be available. Access to U.S. contacts at the Federal, State, and local levels including names, phone and fax numbers, and E-mail address would be in the system. Most importantly, the public portions of the system would be readily available to the general public through the Internet, and from kiosks in world Trade Centers, Federal Building's, public libraries, and Customs Houses around the country.

Proof of concept for the ITDS will be the North American Trade Prototype, a cargo and conveyance processing system being developed jointly by Canada, Mexico and the United States under the auspices of the Heads of customs Conference. Article 512 of NAFTA, entitled ''Cooperation'', states that to the extent possible the three Parties shall cooperate, for the purpose of facilitation of the flow of trade, the harmonization of documentation, standardization of data elements, the acceptance of an international data syntax, and the exchange of information. This North American Trade Automation Prototype (NATAP) will allow the Customs, Transportation, and Immigration Services, and other participating government agencies of all three countries to experiment with advanced processing and documentation systems and incorporate new techniques to facilitate and regulate the flow of trade among the three countries. NATAP is based on commercial, transaction-level information for all shipments, standard data elements and definitions, pre-arrival processing, Radio Frequency Identification Devices on conveyances to provide advance notice of arrival, paperless transactions, and UN/EDIFACT communication protocol.

NATAP itself will be a low volume test of new concepts with a limited number of participants, operating at six sites. The sites are: Buffalo/Fort Erie, Detroit/Windsor, Laredo/Nuevo Laredo, El Paso/Ciudad, Otay Mesa/Tijuana, and Nogales/Nogales. It will operate in parallel with current systems. Participants in the Prototype must continue to meet all current requirements. NATAP will allow the three Custom administrations to step outside existing systems and experiment with new procedures and technologies to realize the goals and vision of NAFTA. Although NATAP will be limited in scope, the concepts that will be tested are a reflection of the full scale data system envisioned.

NATAP will encompass the transportation and commercial data for export and import processes in the land border environment. The extent to which each government extends the functionality of the Prototype for testing other agency requirements or to experiment with national risk assessment or selectivity processing system will be determined by each Customs authority. NATAP will be tested and evaluated at the above mentioned sites beginning in September, 1996 and is expected to run through March, 1997.

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address using commercial documents as the basis for processing the port clearance of international trade transactions at the border; the accuracy of the burden estimates in terms of reporting and record keeping and capitalization costs, if any; and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Commercial Invoices.

OMB Number: 1515–0120.

Form Number: N/A.

Abstract: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties. The information which is supplied by the foreign shipper is used to assure compliance with statues and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 10 seconds.

Estimated Total Annual Burden Hours: 84,000.

Estimated Total Annualized Cost on the Public: $1,201,200.00.

Dated: August 9, 1996.

V. Carol Barr,

Printing and Records Services Group.

[FR Doc. 96–20713 Filed 8–13–96; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 96–60]

Recordation of Trade Name: ''OMI Industries Inc.''

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On April 3, 1996, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''OMI INDUSTRIES INC.,'' was published in the Federal Register (61 FR 14851). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than June 3, 1996. No responses were received in opposition to the notice. Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name ''OMI INDUSTRIES INC.,'' is recorded as the trade name used by OMI Industries Inc., a corporation organized under the laws of the State of Ohio, located at 310 Outerbelt Street, Columbus, Ohio 43213.

The trade name is used in connection with aluminum and steel die cast products.

EFFECTIVE DATE: August 14, 1996.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229 (202 482–6960).

Date: August 5, 1996.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 96–20666 Filed 8–13–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

[IA–38–90]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–38–90 (TD 8382), Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund (§§ 1.6694–2(c) and 1.6694–3(e)).

DATES: Written comments should be received on or before October 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (Final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20743 Filed 8–13–96; 8:45 am]

BILLING CODE 4830–01–P

[INTL–978–86]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–978–86, Information Reporting by Passport and Permanent Residence Applicants (§ 301.6039E–1(c)).

DATES: Written comments should be received on or before October 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting by Passport and Permanent Residence Applicants.

OMB Number: 1545–1359.

Regulation Project Number: INTL–978–86 (Notice of proposed rulemaking).

Abstract: The regulations require applicants for passports and permanent residence status to report certain tax information on the applications. The regulations are intended to enable the IRS to identify U.S. citizens who have not filed tax returns and permanent residents who have undisclosed sources of foreign income and to notify such persons of their duty to file United States tax returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents for Passport Applicants: 5,000,000.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours for Passport Applicants: 500,000.

Estimated Number of Respondents for Permanent Residence Applicants: 500,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours for Permanent Residence Applicants: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20744 Filed 8–13–96; 8:45 am]

BILLING CODE 4830–01–P

[IA–83–90]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–83–90 (TD 8383), Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer (§ 301.7216–2(o)).

DATES: Written comments should be received on or before October 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90 (Final).

Abstract: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 8, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–20745 Filed 8–13–96; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday
August 14, 1996

Part II

Environmental Protection Agency

40 CFR Parts 261, 271, and 302
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents; CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[SWH–FRL–5551–3]

RIN 2050–AD84

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents; CERCLA Hazardous Substance Designation and Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: After extensive study of 14 chemicals potentially used as solvents, characterization of the wastes generated from solvent uses, and a risk assessment evaluating plausible mismanagement scenarios for these wastes, the U.S. EPA is proposing not to list those additional wastes from solvent uses as hazardous waste under 40 CFR Part 261. This action is proposed under the authority of Sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments (HSWA) of 1984, which direct EPA to make a hazardous waste listing determination for solvent wastes.

The determinations in this proposed rule are limited to specific solvent wastes, and are made pursuant to the current regulatory structure that classifies wastes as hazardous either through a specific listing or as defined under the more generic hazardous waste characteristics. Many of the solvent wastes addressed in this proposed rule are already regulated as hazardous wastes due to their characteristics. It is important to note that the proposal not to list these solvent wastes as hazardous wastes is not a determination that these chemicals are nontoxic. It is a determination only regarding the need for specifically adding these solvent wastes to the lists of hazardous waste.

DATES: EPA will accept public comments on this proposed rule until October 15, 1996. Comments postmarked after this date will be marked ''late'' and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by August 28, 1996.

ADDRESSES: The official record for this proposed rulemaking is identified by Docket Number F–96–SLDP–FFFFF and is located at the following address. The public must send an original and two copies of their comments to: RCRA Information Center, U.S. Environmental Protection Agency (5305W), 401 M Street, SW, Washington, D.C., 20460.

Although the mailing address for the RCRA Information Center has not changed, the office was physically moved in November 1995. Therefore, hand-delivered comments should be taken to the new address: 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy 100 pages from the docket at no charge; additional copies cost $0.15 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to protect physically the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to the commenter. Rather, EPA is experimenting with this procedure as an attempt to expedite our internal review and response to comments. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign. For further information on the submission of diskettes, contact the Waste Identification Branch at the phone number listed below.

Requests for a hearing should be addressed to Mr. David Bussard at: Office of Solid Waste, Hazardous Waste Identification Division (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (703) 308–8880.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline toll-free, at (800) 424–9346, or at (703) 920–9810 in the Washington, D.C. metropolitan area. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, D.C. metropolitan area. For technical information or questions regarding the submission of diskettes, contact Mr. Ron Josephson, U.S. EPA Office of Solid Waste, Waste Identification Branch (5304W), 401 M St., SW, Washington, D.C. 20460, (703) 308–8890.

SUPPLEMENTARY INFORMATION: There are no regulated entities as a result of this action.

I. Background

A. Statutory and Regulatory Authorities

This investigation and listing determination was conducted under the authority of Sections 2002(a), 3001(b) and 3001(e)(2) of the Solid Waste Disposal Act (42 U.S.C. 6912(a), and 6921 (b) and (e)(2)), as amended (commonly referred to as RCRA).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a), is the authority for the CERCLA aspects of this proposed rule.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921(e)(2)) requires EPA to determine whether to list as hazardous several specified wastes, including solvent wastes.

The Environmental Defense Fund (EDF) and EPA entered into a consent decree to resolve most of the issues raised in a civil action undertaken by the Environmental Defense Fund (*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.)), in which the Agency agreed, among other things, to a schedule for making a listing determination on spent solvents. The consent decree was approved by the court on December 9, 1994. As modified, the consent decree provides that the listing determination is scheduled to be proposed for public comment on or before July 31, 1996; upon notification to EDF, this date may be extended for up to 15 days. Under the agreement, EPA must promulgate the final rule on or before May 31, 1997. This listing determination includes the following spent solvents, still bottoms from the recovery of the following solvents, and spent solvent mixtures thereof: cumene, phenol, isophorone, acetonitrile, furfural, epichlorohydrin, methyl chloride, ethylene dibromide, benzyl chloride, p-dichlorobenzene, 2-methoxyethanol, 2-methoxyethanol acetate, 2-ethoxyethanol acetate, and cyclohexanol.

For an additional set of solvents, EPA agreed to conduct a study, in lieu of a listing determination, and issue a final report. The study is scheduled to be issued by August 30, 1996. This study is to discuss the wastes associated with the use of the materials as solvents, the toxicity of the wastes, and a description of the management practices for the wastes. These additional chemicals are: diethylamine, aniline, ethylene oxide, allyl chloride, 1,4-dioxane, 1,1-dichloroethylene, and bromoform.

As part of its regulations implementing Section 3001(e) of RCRA, EPA published a list of hazardous wastes that includes hazardous wastes generated from nonspecific sources and a list of hazardous wastes from specific sources. These lists have been amended several times and are published in 40 CFR 261.31 and 40 CFR 261.32, respectively. In today's action, EPA is proposing not to amend 40 CFR 261.31 to add wastes from nonspecific sources generated during the use of the 14 solvents. This is not a determination that these chemicals are nontoxic. Many of these solvent wastes are, in fact, already regulated as hazardous waste because they exhibit a hazardous waste characteristic under 40 CFR 261 Subpart B, and/or because they are mixed with other solvent wastes that are, themselves, listed hazardous waste. Rather, this is a determination only regarding the need for adding these specific wastes to the RCRA hazardous waste listings based on the specific criteria in the listing regulations. Although the consent decree does not require a listing determination for the solvents covered by the study, the Agency may decide to make a listing determination for those solvents in a future rulemaking.

B. Existing Solvent Listings and the Regulatory Definition of Solvent

Five hazardous waste listings for solvents have been promulgated to date

(40 CFR 261.31(a)): F001, F002, F003, F004, and F005. EPA has defined the universe of wastes covered by today's listing determination to include only those wastes generated as a result of a solvent being used for its ''solvent'' properties. This approach is consistent with the existing solvent listings (50 *FR* 53316; December 31, 1985); this is also consistent with the term ''spent'' in the Consent Decree.

This definition of ''solvent use'' was included in the RCRA 3007 Solvent Use Questionnaire used to obtain information to support today's proposed rulemaking.

> Solvents are used for their ''solvent'' properties—to solubilize (dissolve) or mobilize other constituents. Examples of such solvent use include degreasing, cleaning, and fabric scouring, use as diluents, extractants, and reaction and synthesis media, and for other similar uses. A chemical is not used as a solvent if it is used only for purposes other than those described above.

Spent solvents are solvents that have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise processed (50 FR 53316, December 31, 1985). The listing investigation undertaken to support today's proposal covered spent solvents, still bottoms from the recovery of spent solvents, and mixtures of spent solvents after use with other solid wastes. The Agency also investigated the residuals generated by processes that use the solvents of interest. Residuals include spent solvents, residuals generated during solvent recovery, and any residuals generated after the solvent has been introduced into the process that might include some concentration of spent solvent. The existing solvent listings in 40 CFR 261.31 apply to spent solvents that contain at least 10 percent (by volume), before use, of the listed solvents are used for their ''solvent properties,'' as defined in the December 31, 1985 Federal Register (50 FR 53316). In evaluating spent solvent wastes for today's determination, however, EPA considered all reported solvent uses, including those reported to be below the 10% threshold.

EPA's listing investigation did not consider processes where the constituents of interest are used as raw materials or principally sold as commercial products (i.e., where the constituent is not used for its solvent properties) because the materials used as raw materials or products are not generally considered wastes under RCRA. This also is discussed in the December 31, 1985 *FR*, (''* * * process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing''). EPA could examine the wastes from such nonsolvent uses, if deemed necessary. However, with a backlog of listing determinations to complete under court-ordered deadlines, EPA has focussed its current efforts on those determinations required by law. An example of the use of solvents as ingredients is the use of solvents contained in paints, coatings, or photoresist.

EPA solvent listings are distinct from most other hazardous waste listings in 40 CFR Part 261 Subpart D because they cover hazardous wastes from the use of, rather than the production of, specified chemicals. As noted above, the Agency has used the same approach in this listing determination as in previous listings. EPA believes that applying this definition of spent solvent in today's rulemaking is a reasonable approach. RCRA 3001(e)(2) directs EPA to make a listing determination on ''solvents,'' but provides no further direction on the meaning of that term. EPA therefore has the discretion to reasonably define the scope of the listing determination. The Consent Decree identifies a subset of solvent wastes that are potential candidates for listing, and specifies that the listing determination applies to ''spent solvents.'' Use of the definition has allowed the Agency to place reasonable limits on the scope of its listing investigation for this rulemaking. Given the ubiquity of ''solvents'' in general, the Agency cannot take a census of a particular industry for a study (as other recent listing determinations have done) to arrive at a regulatory determination. Instead, the Agency has used the existing definition of solvent use and attempted to identify facilities and industries that use these chemicals as solvents.

For this listing determination, this definition proved particularly useful as many of the chemicals (where used as solvents) are rather specialized in their solvent uses. The Agency has, therefore, retained the interpretations used in the past to define ''solvent use'' and ''spent solvent'' waste generation.

Finally, in a previous proposed hazardous waste listing for wastes from the production of dyes and pigments (59 FR 66072, December 22, 1994) EPA presented the general approach the Agency uses for determining whether to list a waste as hazardous pursuant to 40 CFR 261.11(a)(3). The discussion focussed on the selection of waste management scenarios used in assessing risk and the use of information on risk levels in making listing determinations. This approach was further developed in EPA's proposed listing for petroleum refining process wastes (60 FR 57747, November 20, 1995). EPA is employing the same general approach in today's proposal. Readers are referred to these notices for a description of EPA's listing policy. Also, Section II.C.2., ''Risk Assessment,'' contains a discussion of how elements of EPA's listing policy were applied in today's listing determination.

II. Today's Action

A. Summary of Today's Action

This action proposes not to list as hazardous wastes from solvent uses of the following 14 chemicals from the EDF consent decree: acetonitrile, 2-ethoxyethanol acetate, 2-methoxyethanol, 2-methoxyethanol acetate, cyclohexanol, cumene, phenol, furfural, isophorone, methyl chloride, 1,4-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide. The Agency has determined that these wastes do not meet the criteria for listing set out in 40 CFR 261.11. Sections II.D through II.M of this preamble present waste characterization, waste management, mobility, persistence, and risk assessment data that are the bases for the Agency's proposal not to list these wastes.

For the first 10 chemicals, EPA found that the management of residuals from the use of these chemicals as solvents does not pose a risk to human health and the environment under the plausible mismanagement scenarios. The data used as the bases for these determinations are presented in Sections II.F through II.M of today's proposal. Detailed information is presented in the background documents supporting today's proposal, which are available in the docket (see **ADDRESSES**).

For the last four chemicals, the decision not to list residuals from the use of these chemicals as solvents is due to EPA's belief that these chemicals are extremely unlikely to be used as solvents based on a lack of data indicating widespread solvent use for these chemicals. These chemicals were originally put on the list in the consent decree because of initial indications that some solvent use may have existed. However, EPA did not find significant solvent use for these chemicals. One of the chemicals (p-dichlorobenzene) is a solid at room temperature, and the other three (benzyl chloride, epichlorohydrin, and ethylene dibromide) are relatively reactive chemicals not well suited to solvent use. EPA's information shows that the reported use of these four chemicals as solvents is linked to bench-scale or experimental laboratory

settings, and no significant solvent uses were found.

In short, the Agency is proposing not to list as hazardous benzyl chloride, epichlorohydrin, ethylene dibromide, and p-dichlorobenzene as hazardous spent solvents because these chemicals are extremely unlikely to be used as solvents. For more detailed Agency findings on these chemicals, see Sections II.N through II.Q of today's proposal and the background document supporting today's proposal. The Agency requests comment for new information on other solvent uses not covered in this proposal. If the Agency receives new data during the comment period, the Agency may use these data to revise risk assessment methodology and assumptions.

B. EPA's Evaluation of Solvent Use

1. Development of Study Universe

Spent solvents differ from other listed wastes among EPA's waste listings in that they are not principal waste streams generated by manufacturing processes. Rather, they are used in a host of manufacturing and allied applications, such as cleaning, degreasing, extraction, purification, etc.

As part of the solvent use study, the Agency researched uses for all 14 chemicals being considered in this listing determination (See Section II.B). Following the data gathering, the Agency sent out almost 1,500 preliminary questionnaires in an attempt to characterize industrial solvent use. After compiling the data and conducting follow up phone calls to facilities, the Agency mailed out 156 questionnaires to facilities to further characterize solvent uses. Summary information from these questionnaires forms part of the basis of the listing determination and may be found in the background document supporting today's proposal.

The solvents listing investigation focuses on facilities using specific chemicals for their solvent properties. At the outset of this investigation, EPA set out to identify probable solvent uses for these chemicals. The Agency conducted a thorough literature search to characterize the potential solvent uses. This search is fully described in the background document supporting today's proposal. The Agency identified industrial processes known or suspected of using the 14 chemicals being investigated as solvents through such sources as chemical engineering and industrial manufacturing reference books. Also central to the results of the literature search was the location of four to ten years of abstracts from scientific publications that referenced the use of the 14 chemicals of concern as solvents. From these sources, the Agency developed profiles of known, suspected, and potential uses of these 14 chemicals as solvents.

The solvent uses identified were correlated with specific industries, using Standard Industrial Classification (SIC) Codes. The list of SIC codes developed was cross-referenced, by solvent, with other Agency data sources, including the Toxic Release Inventory (TRI) reporters list, Office of Water facility lists, and other sources to obtain a final list of facilities that might reasonably be expected to use one of the 14 chemicals as a solvent. The other sources utilized included (1) the mailing list for EPA's RCRA 3007 Petroleum Industry Questionnaire, (2) EPA's effluent guidelines questionnaire recipients for the Pharmaceuticals and Organic Chemicals, Plastics, and Synthetic Fibers industries, (3) facilities included in the Agency's National Air Toxics Inventory of Chemical Hazards (NATICH) database, and (4) pulp and paper mills studied during an investigation of pulp and paper mill sludge disposal. Additional facilities were included that were identified by EPA's Office of Pollution Prevention and Toxics (OPPT) during an evaluation of solvents. The Agency also met with trade groups representing pharmaceutical, chemical, synthetic organic chemical, and semiconductor manufacturers.

Where a suspected use of a chemical would affect industries other than those discussed above, EPA refined the facility mailing list through the use of publicly available industrial address books and product manufacturer listings. This approach to developing a mailing list is discussed in detail in the background document to support today's proposed rule.

The Agency used a preliminary questionnaire to prescreen for solvent use by facilities on the mailing list. The RCRA 3007 Preliminary Questionnaire of Solvent Use was mailed to 1,497 facilities in May 1993. Facilities were asked to provide the quantity of the chemical used as a solvent in 1991 and 1992. As a result of the preliminary questionnaire, the Agency removed more than 900 facilities from further analysis because they reported no use of the 14 chemicals as solvents.

The Agency attempted to refine the results of the preliminary questionnaire further before sending out the full 3007 survey. Several hundred of the facilities were contacted to confirm and clarify the information reported. Some facilities misreported the use of a solvent (i.e., reported methyl chloride when methylene chloride was used), and such errors were corrected. (Telephone logs for these contacts are contained in the docket to today's rule.) Further, because EPA estimated that very little useful information would be gained from smaller facilities, EPA eliminated from further consideration those facilities that used less than a combined total of 1,200 kilograms of all of the chemicals of concern. The Agency chose this cutoff because it represents the maximum annual quantity of waste that would be generated by a conditionally exempt small quantity generator (i.e., one that generates less than 100 kilograms per month of a hazardous waste). Further, EPA's data collection effort showed that most facilities (90%) reporting less than 1,200 kg/year were in fact using significantly less than 1,200 kg/year, i.e., 120 kg/year or less. In all the Agency eliminated approximately 400 facilities from further study, either due to reporting errors, discontinued use, or use of small quantities of the solvents. As a result of this refinement, 156 facilities received a RCRA 3007 Questionnaire of Solvent Use.

EPA believes that the elimination of most small quantity users does not significantly affect the risk assessment, because the volumes used were small compared to the larger volume users that were sent the full survey. The risk assessment results are based on the *highest* waste volumes (and solvent loadings) reported for each management practice (see section II.C.2), therefore any significant risks would be found in EPA's evaluation of the larger quantity users.

The Agency did not conduct a sampling and analysis program for the spent solvent wastes. EPA found that obtaining representative samples would be almost impossible due to potential use of these solvents in a variety of different industries. The cost of such a program would have been prohibitive to the Agency.

2. Applicability to National Use

For the solvents under review, the Agency believes that the industry study results obtained through the methodology described above accurately characterize solvent uses of the chemicals mandated for review. In addition, the industry study completed gives the Agency an accurate idea of the nationwide uses of these chemicals, whether or not the chemicals are used in large or small quantities as solvents. The Agency is confident that the collected information on solvent use covers the large solvent users.

Once the industry study was completed, the resulting data for each of the 14 chemicals was evaluated to determine whether or not large users may have reasonably been missed during the RCRA § 3007 survey process. Several considerations were evaluated for this review, including:

- the scope of anticipated solvent use obtained during the extensive literature search prior to pre-questionnaire mailing list development;
- whether or not the chemical was required to be reported in the 1990 Toxics Release Inventory;
- the number of facilities and type of solvent use eventually identified and characterized in the full RCRA § 3007 survey; and
- comparison of § 3007 survey solvent use quantities with total chemical production volume and, where available, volume of the chemical used as a non-solvent.

Three chemicals under evaluation (cyclohexanol, isophorone, and furfural) were not TRI chemicals in 1990, a primary data source for the RCRA § 3007 pre-questionnaire mailing list. However, EPA believes that large users of these chemicals were captured through other data sources. Literature searches suggested limited solvent uses for these chemicals across several industries. Results from the full RCRA § 3007 questionnaire confirmed limited solvent uses of greater than 1,200 kg/year for two chemicals: a single facility for cyclohexanol and four facilities for isophorone. The one cyclohexanol facility was a petroleum refinery and all identified petroleum refineries were sent a pre-questionnaire.

Isophorone solvent use was identified at four facilities across four SIC codes. Three of these facilities used isophorone as a solvent in a similar process (in the coating industry). As with cyclohexanol, no TRI data existed for isophorone to identify specific facilities.

Furfural was used in large quantities as a solvent, however nearly all of the solvent use (>99.9%) was found in the petroleum industry, which EPA surveyed. Given that the major use of this solvent was very specialized (e.g., extraction of lube oil), the Agency believes that the collected information on solvent use covers all large solvent users.

A detailed description of the methodology used to evaluate the coverage of the Agency's industry study for the 14 chemicals of concern is contained in the background document contained in the docket for today's rule (Hazardous Waste Listing Determination Background Document for Solvents). Statistics on production and solvent use for each solvent are also summarized in the discussions of the listing determination for each respective chemical (Sections II.D through II.N). The Agency requests comment on the use of these chemicals as solvents EPA may not have uncovered in its data collection efforts.

3. Comparison of Questionnaire and Prequestionnaire Data

After the receipt of responses to the RCRA 3007 Questionnaire of Solvent Use, EPA compared the 1992 solvent use reported in the Preliminary Questionnaire with the solvent use reported in the 1993 Questionnaire. With the exception of acetonitrile, for which a slight increase in solvent use is noted, the reported use of the remaining 13 chemicals decreased. For all of the chemicals, the solvent use reported in the preliminary questionnaire included amounts of wastes containing the chemicals reported as managed by commercial treatment, storage, and disposal facilities (TSD). In some cases, such as benzyl chloride, ethylene dibromide and p-dichlorobenzene, nearly all quantities reported as used in 1992 were actually wastes received by TSDs. Other apparent decreases resulted from incorrect reporting of chemicals used, or because further review by EPA showed that the use did not meet EPA's definition of solvent use (see below). In addition to apparent changes that resulted from corrections to the data base, there were decreases in actual quantities used for some solvents. Specifically, significant decreases were noted for glycol ethers (e.g., 2-ethoxyethanol acetate, 2-methoxyethanol, and 2-methoxyethanol acetate), because facilities were phasing out their use as solvents. Additional decreases were attributable to plant closures and other discontinued use.

Based on a detailed review of the full Questionnaire responses, the Agency determined that certain uses reported in 1992 did not meet EPA's definition of solvent use. For example, further reductions from quantities reported in 1992 are attributable to the elimination from consideration of the use of a solvent as an ingredient in a photoresist in semiconductor and printed circuit board manufacture, and use of a solvent as a component of a paint or coating. (For example, for photoresist uses, Agency staff determined that such uses did not comport with the definition of ''solvent use'' as described earlier because the chemicals were not carriers, reaction media, extractants, etc. Rather, they were used in a way that suggested they were components of the manufacturing process.) Finally, variations in usage are to be expected. For many solvents, facilities reported either increases or decreases in use between 1992 and 1993 that indicate changes in production schedule or product slate. Additional details on these changes, on a solvent-by-solvent basis, are presented in the Background Document for today's rulemaking. EPA believes that all large users of the 14 solvents were identified and surveyed as part of today's determination because of the specialized nature of solvent use for such chemicals as observed in its literature search. EPA also notes that users of small amounts of one solvent were captured in many cases because they are large users of another solvent. For example, one refinery uses a large amount of phenol but also was captured as an acetonitrile user.) Further, the Agency believes that the solvent use reported in response to the full Questionnaire provides a more accurate characterization of solvent use patterns than the Preliminary Questionnaire because of the greater level of detail provided by the respondents.

C. Description of Health and Risk Assessments

In determining whether waste generated from the use of these 14 chemicals as solvents meets the criteria for listing a waste as hazardous as set out at 40 CFR 261.11, the Agency evaluated the potential toxicity of the solvents, the fate and mobility of these chemicals, the likely exposure routes, and the current waste management practices.

1. Human Health Criteria and Effects

The Agency uses health-based levels, or HBLs, as a means for evaluating the level of concern of toxic constituents in various media. In the development of HBLs, EPA first must determine exposure levels that are protective of human health and then apply standard exposure assumptions to develop media-specific levels. EPA uses the following hierarchy for evaluating health effects data and health-based standards in establishing chemical-specific HBLs:

- Use the Maximum Contaminant Level (MCL) or proposed MCL (PMCL), when it exists, as the HBL for the ingestion of the constituent in water. MCLs are promulgated under the Safe Drinking Water Act (SDWA) of 1984, as amended in 1986, and consider technology and economic feasibility as well as health effects.
- Use Agency-verified Reference Doses (RfDs) or Reference Concentrations (RfCs) in calculating HBLs for noncarcinogens and verified

carcinogen slope factors (CSFs) in calculating HBLs for carcinogens. Agency-verified RfDs, RfCs, and CSFs and the bases for these values are presented in the EPA's Integrated Risk Information System (IRIS).

- Use RfDs, RfCs, or CSFs that are calculated by standard methods but not verified by the Agency. These values can be found in a number of different types of Agency documents and EPA uses the following hierarchy when reviewing these documents: Health Effects Assessment Summary Tables (HEAST); Human Health Assessment Group for Carcinogens; Health Assessment Summaries (HEAs) and Health and Environmental Effects Profiles (HEEPs); and Health and Environmental Effects Documents (HEEDs).
- Use RfDs or CSFs that are calculated by alternative methods, such as surrogate analysis, including structure activity analysis and toxicity equivalency.

All HBLs and their bases for this listing determination are provided in the risk assessment background document entitled Assessment of Risks from the Management of Used Solvents, which can be found in the RCRA docket for this rule at EPA Headquarters (see **ADDRESSES** section). That document also includes the evaluation of acute toxicity data, such as lethal doses for the oral and dermal routes, and lethal concentrations for the inhalation route.

2. Risk Assessment

The risk characterization approach follows the recent EPA Guidance on Risk Characterization (Browner, 1995) and Guidance for Risk Assessment (EPA Risk Assessment Council, 1991). The guidance specifies that EPA risk assessments will be expected to include (1) the central tendency and high-end portions of the risk distribution, (2) important subgroups of the populations such as highly susceptible groups or individuals, if known, and (3) population risk. In addition to the presentation of results, the guidance also specifies that the results portray a reasonable picture of the actual or projected exposures with a discussion of uncertainties. These documents are available in the public docket for this action (see **ADDRESSES** section).

Individual Risk

Individual risk descriptors are intended to convey information about the risk borne by individuals within a specified population and subpopulations. These risk descriptors are used to answer questions concerning the affected population and the risk for individuals within a population of interest. The risk methodology section specifies the process used by EPA to assess individual risk for these solvents.

Due to the unique circumstances of this listing determination (e.g., variety of industries using solvents, limitations of the available data), EPA was unable to assess population risks. The generic management scenarios devised for this risk assessment were not industry-specific and EPA did not have sufficient data to allow for specific population risk assessment; such an assessment would have required inappropriate assumptions and with little accuracy in results. There is no need to conduct population risk assessment, however (even were it feasible), for today's action, because EPA did not find any significant individual risks of concern for any of the 14 chemicals examined.

Uncertainties Associated With the Risk Assessment

One source of uncertainty derives from the generically constructed management scenarios used; EPA had to make a variety of assumptions in order to model releases and exposures. Due to data limitations, as noted above, EPA was also not able to characterize actually exposed populations. Another uncertainty stems from the assumptions of plausible mismanagement, as described below in the following section.

The Agency completed an enormous task in the data gathering effort. These data helped EPA to identify the major waste generators, and the quantities of solvent waste most likely to pose a risk to human health and the environment. The questionnaire asked for detailed information on waste generation, management, and disposal for these chemicals when used as solvents. By closely examining facilities that use these chemicals as solvents, the Agency identified where these chemicals are used as solvents, and where wastes of interest are generated and managed. The Agency then used this information to focus on the appropriate exposure scenarios. Because EPA relied on the data provided from the questionnaires, the resulting analysis is dependent on the quality of the data collected.

a. Selection of Waste Management Scenarios. EPA's regulations at 261.11(a)(3)(vii) require the Agency to consider the risk associated with ''the plausible types of improper management to which the waste could be subjected'' because exposures to wastes (and therefore the risks involved) will vary by waste management practice. The choice of which ''plausible management scenario'' (or scenarios) to use in a listing determination depends on a combination of factors which are discussed in general terms in EPA's policy statement on hazardous waste listing determinations contained in the Dyes and Pigments Listing Determination (59 FR 24530, December 22, 1994). EPA applied this policy, with some specific modifications that reflect unique characteristics of the industry, in the petroleum refining listing determination (60 FR 57747, November 20, 1995). The general use of the policy described in the dyes and pigments listing determination and applied in the petroleum rule is continued here.

The following discussion explains the selection of plausible management scenarios for the solvents listing determination. EPA's basic approach to selecting which waste management scenarios to model for risk analysis in listing determinations is to examine current management practices and assess whether or not other practices are available and would reasonably be expected to be used. Where a practice is actually reported in use, that practice is generally considered ''plausible'' and may be considered for potential risk. EPA then evaluates which of these current or projected management practices for each wastestream are likely to pose significant risk based on an assessment of exposure pathways of concern associated with those practices. There are common waste management practices, such as landfilling, which the Agency generally presumes may be plausible for solid wastes and will evaluate it for potential risk. There are other practices which are less common, such as land treatment, where EPA will consider them plausible only where the disposal methods have been reported to be practiced. In some situations, potential trends in waste management for a specific industry suggest the Agency will need to project ''plausible'' mismanagement even if it is not currently in use in order to be protective of potential changes in management and therefore in potential risk.

As experience is gained in listing determinations, the Agency recognizes the need to more specifically describe its approach to plausible management selection for the circumstances related to each listing. EPA believes it necessary to do so here, in part because of the unique nature of the solvents listing determination.

Selection of plausible management scenarios can better be described by noting that there are three important elements of this selection that must be considered in the risk assessment process: selection of the management practice(s) considered ''plausible'',

selection of waste volumes evaluated as going to each plausible practice, and selection of exposure pathways for each practice evaluated.

The first element is selection of plausible management practices. As described above, plausible practices are ones that are reported by generators and can also be ones that are common practices, such as landfilling. EPA may project less common or unreported practices as plausible if there are compelling reasons for doing so. For the solvents listing determination, all practices EPA considers common were reported.

In general, solvent wastes were wastewaters, high concentration organic wastes, or treatment residuals. Facilities also had losses of solvents gases due to process vents, flares, or other air releases, but these releases are not typically considered spent solvent wastes because they are process-related. Wastewaters were typically fairly dilute and are generally managed in a biological wastewater treatment system or sent to a Publicly Owned Treatment Works (POTW). In most cases, wastewater treatment occurred in tanks, however, some treatment in surface impoundments did occur. Wastewaters for one solvent (acetonitrile) were reported to go to underground injection wells, however, essentially all (>99.99%) such discharges were to Subtitle C hazardous waste injection wells.

Questionnaire data show that a high percentage of the high organic nonwastewaters go to thermal treatment in incinerators, industrial boilers, or fuel blenders. Because many of these solvent wastes are either characteristic hazardous wastes (primarily due to ignitability) and/or are mixed with listed hazardous wastes, the vast majority of these wastes are handled as hazardous. The other major category of nonwastewaters was treatment residuals (e.g., wastewater treatment sludges, incinerator ash) and were typically landfilled.

The Agency evaluated potential risk for the following practices: storage, combustion, wastewater treatment tanks and surface impoundments, and underground injection wells. There were no compelling reasons for projecting other practices as plausible.

Second, there is the selection of the volumes of each wastestream the Agency considers could be disposed of in that management practice. (Note that EPA must also consider the ''loading'' of waste going to disposal sites. The ''loading'' is the amount of the solvent itself contained in the volume of the wastestream reported.) Here the Agency must determine what the volume of a wastestream is or could be going to a selected plausible management practice. Because different volumes are reported by generators, the Agency most often puts these reported volumes into a distribution and selects a high percentile volume to be representative of a reasonable volume that could go to the disposal scenario, usually a volume falling at or above the 90th percentile of volumes reported. That volume is then used as the volume input parameter for the risk assessment model. For solvents, EPA used the highest reported volumes (and loadings) going to the different management practices, because the number of volumes (and loadings) were limited to a few data points in many cases. The Agency did not attempt to project higher volumes than those reported in this listing determination for the following reasons:

- Use of these solvents is mostly specialized. The volume distribution was often skewed by one or two very high volume users. EPA used these higher volumes in its risk assessment modeling and therefore believes the conservative high volumes were in fact modeled.
- For purposes of this listing determination, the Agency has assumed that wastestreams reported to be managed as hazardous waste will continue to be managed in that way in the future. In this listing determination in particular, that assumption is considered reasonable because solvent use most often requires very high concentrations of chemical. Spent solvent as initially generated is therefore often very high concentration waste, meaning that the wastestreams are often and will continue to be characteristically hazardous for ignitability. In addition, many solvents are often used as mixtures containing other solvents that are listed as hazardous when spent (i.e., the F001 through F005 listings), or exhibit a characteristic (e.g., ignitability). Such wastestreams would have to continue to be managed as hazardous, and stringent requirements are in place to ensure that hazardous wastes do not pose a threat to human health or the environment. This also means that certain waste management practices could not be employed. It would be unreasonable to assume that large amounts of such concentrated organic wastestreams would be shifted from combustion or recycling to waste management practices for which they were not reported, such as landfilling, especially when the concentrated organic waste streams are already hazardous wastes subject to the land disposal restriction rules.
- Spent solvents with relatively high value are also recovered by onsite distillation/fractionation in a closed-loop recycle stream. These residuals would not usually be considered wastes (see 40 CFR 261.2), and, therefore, these volumes (if reported) were not used in the risk assessment modeling.
- Investment by industry in waste management practices suggests that dramatic changes in reported volumes going to specific waste management practices would not occur. For example, it would be unreasonable to assume that a generator with a large investment in a wastewater treatment plant would abandon that management practice for another.

For these reasons, the Agency has concluded that the use of reported volumes of solvent wastestreams going to specific waste management practices is a reasonable way to project potential risk from spent solvent waste management.

The third element in selecting plausible management scenarios is the selection of the actual exposure pathways that could be expected to be created via that management practice. The exposure scenarios examined are discussed in the following section.

b. Exposure Scenarios. For each management scenario, EPA chose the pathways through which the solvents could affect human health or the environment. EPA initially considered a wide range of direct and indirect exposure pathways, including direct inhalation, ingestion of groundwater, inhalation of soil and dust, ingestion of soil, ingestion of surface water, ingestion of crops, ingestion of animal/dairy products, and ingestion of fish and shellfish. Exposure through the ingestion of fish and shellfish were not quantitatively evaluated because the solvents are nearly all highly water soluble, and therefore are not expected to be absorbed or bioaccumulated. Vapor phase releases will have little tendency to deposit to soil or surface water and, thus, little tendency to enter the food chain or crops.

Based on the physical and chemical properties of the constituents of concern and current management practices, direct inhalation was identified as the primary exposure route of concern. EPA also evaluated the groundwater pathway, where appropriate. Given the plausible waste management practices and the physical properties of the solvents, the following exposure scenarios were evaluated.

Management practice	Pathway	Exposure route
Combustion	Air	Inhalation of emissions from combustion.
Storage Tanks	Air	Inhalation of volatilized solvents.
Wastewater treatment tanks	Air	Inhalation of volatilized solvents.
Wastewater treatment surface impoundments	Air and Groundwater	Inhalation of volatilized solvents; ingestion of groundwater contaminated by solvents leaching.

To assess the risks posed by thermal treatment, EPA chose to model potential releases from a boiler as a plausible management practice. For preliminary screening, wastes currently managed in permitted hazardous waste management units (e.g., incinerators) were assumed to be managed in similar types of non-hazardous waste management units (e.g., Subtitle D industrial boiler). This approach results in risk estimates that are quite conservative, since the non-hazardous units are less protective than their hazardous counterparts. In addition, EPA modeled possible air releases from an open accumulation tank, because many solvent wastes are reported to be stored before treatment; for this analysis, EPA assumed that any waste that was thermally treated could be stored prior to treatment. To model potential air releases from wastewater treatment, EPA modeled aerated tanks and surface impoundments.

EPA evaluated two scenarios, landfills and deepwell injection, and found that modeling was not necessary to determine that risks from these pathways would not be significant, as discussed below. A third scenario, treatment of wastewaters in surface impoundments, also did not require extensive analysis to determine that risks from potential releases to groundwater would not be significant (see below).

The data from the 3007 Survey show that wastes that were sent to landfills contained negligible amounts of solvent; landfilling of wastes high in solvent content did not occur. As noted previously, solvent wastes are generally wastes with high organic content (spent solvent liquids, residuals from recycling), or dilute wastewaters. The vast majority of concentrated solvent wastes are hazardous due to characteristic or mixing with other listed wastes, and could not be landfilled, but are thermally treated. Therefore, organic or aqueous liquid wastes are not expected to be managed in a landfill. Few solids were generated that contained any residual solvent. The total loading of all solvents reported going to landfills was <500 kg per year, and nearly all went to Subtitle C landfills. Treatment residuals (wastewater treatment sludges and incineration residuals) were reported to be landfilled; however, they had negligible solvent levels. The lack of solvent in treatment residuals is expected because these solvents are efficiently treated by combustion and in wastewater treatment systems. Therefore, because the wastes that reported to go to landfills contained little or no solvent, and considering that nonwastewaters with any appreciable solvent content are generally hazardous and thus are managed as hazardous waste already, the Agency had no reason to model the landfill scenario.

EPA also considered the potential for groundwater risks posed by treatment in surface impoundments for all solvents that had wastewater going to surface impoundments for treatment. EPA found that these wastes are diluted by the flow of other dilute wastewaters (i.e., at the ''headworks''). EPA gathered data on headworks flow in the 3007 Survey, and this allowed EPA to estimate headworks concentrations of all solvents going to surface impoundments based on the loading of solvent in each waste and the total wastewater flow to the headworks. Solvent levels were generally found to be below the HBLs at the headworks. Thus, no modeling was needed to ''bound out'' nearly all reported impoundment practices for possible groundwater risks. EPA closely examined the few remaining cases for which solvent levels might enter impoundments above HBLs, and completed bounding analysis when appropriate. Potential risks from surface impoundment treatment are discussed in more detail in the specific sections for each solvent.

The practice of deep-well injection was reported to occur for only one solvent (acetonitrile); nearly all of it was hazardous waste (except for wastes containing 2 kg of solvent), and all went to Subtitle C wells. Given that nearly all of the waste was hazardous and was disposed of in RCRA permitted units, the waste is adequately regulated. EPA found no evidence of any disposal in nonhazardous deepwells. Therefore, EPA did not evaluate this practice further.

Finally, even though EPA could not find scenarios that could lead to significant releases to ground water, the Agency also considered whether the spent solvent wastes had the potential to form non-aqueous phase liquids (NAPLs) that might move as a separate phase either above or below the ground water table. These NAPLs may present special problems, especially in assessing their transport and potential impact. However, EPA found that nearly all solvents under consideration are miscible or very soluble in water and are not likely to form NAPLs in groundwater. One chemical with some solvent use, cumene, is only slightly soluble in water. However, EPA found no significant land disposal of cumene wastes. The solubilities of the solvents are given in the section specific to each solvent.

Potential Risks From Spills

The Agency considers significant risk from spillage of spent solvents to be unlikely for several reasons. First, most of the actual volume of residuals reported were low concentration wastestreams, i.e., wastewaters and treatment residuals. Their ''loading'' or mass of constituent in the reported waste is typically very low. These low reported concentrations (often reported as ''trace'' concentrations) were due to both treatment efficiencies of the spent solvents in wastewater treatment systems and dilution in the treatment system itself. Spills of such dilute wastestreams would not be of concern in terms of risk. The high concentration spent solvent wastes would be of most concern, but EPA found the vast majority to be already subject to hazardous waste management requirements as characteristically hazardous waste, or due to use or mixing with other listed solvents.

c. Risk Assessment Methodology. The general approach used for this risk assessment involved successive iterations of risk screening. At each step, risk from waste management scenarios was compared to these levels of concern: for non-carcinogens, a hazard quotient exceeding 1.0, and for carcinogens, a lifetime cancer risk factor in the range of 1×10^{-6} to 1×10^{-4}. For further explanation of levels of concern, see ''EPA's Hazardous Waste Listing Determination Policy'' in 59 FR 66073 (December 22, 1994). The overall risk assessment was conducted in three steps, as outlined below. The results of

the risk assessment for each solvent are described in Sections II.D to II.M.

First Phase of Risk Screening—Bounding Analysis: For each of the scenarios evaluated, EPA applied a screening methodology to arrive at ''bounding'' estimates of risk. These estimates gauge the risk posed by the particular scenario under worst-case conditions: i.e., risk to the most exposed populations under the most conservative assumptions about releases, transport, and exposure. Bounding estimates therefore purposely overestimate the exposure for the purpose of screening out those scenarios which cannot pose any significant risk under any real-life conditions. The scenarios that did not pose a significant risk under a bounding analysis were considered to have been screened out, and were not studied any further.

Second Phase of Risk Screening—High-End and Central Tendency Analysis: For each scenario where bounding analysis risk was above a level of concern, EPA estimated the high-end and central tendency risks. High-end risk describes the individual risk for those persons at the upper end (above the 90th percentile) of the risk distribution; central tendency represents the typical risk using average or median values for all exposure parameters. For this analysis, high-end estimates were determined by identifying the two most sensitive exposure parameters and then using maximum (or near-maximum) values for these parameters. Median or average values were used for all other parameters.

Third Phase of Risk Screening—Wastes Already Regulated as Hazardous: As stated above, EPA noted that many of the waste streams were already hazardous wastes; they were either characteristically hazardous (generally because of ignitability), or mixed with listed solvents (either during use or after waste generation). Current requirements for managing these wastes mean that they will not pose a threat to human health and the environment.

Therefore, EPA applied a third phase of risk screening to those wastes which had not screened out in either of the first two phases. This third phase consisted of a bounding analysis restricted to wastestreams that could plausibly be managed as nonhazardous waste.

d. Consideration of Damage Cases. EPA investigated damage incidents that contained reports of the 14 chemicals under evaluation as contaminants at the site. Sources for this investigation included the Record of Decision Database, the Damage Incident Database, and a literature search. The Record of Decision (ROD) is generated by EPA to document how the Agency plans to clean up a Superfund Site, and contains the results of a detailed study of the contamination at the site. Unlike industry studies in which wastes under study are generated from set processes that are site-specific, in the solvent's industry study it was not possible to determine a contaminant was used as a solvent meeting EPA's definition of solvent use. Wastes disposed at many sites were categorized only in broad terms as ''oily wastes,'' ''pesticide wastes,'' ''organic wastes,'' or ''solvent wastes;'' the uses of specific wastes prior to disposal were not identified. Furthermore, sites were typically contaminated by a wide variety of chemicals, many of which are widely used F-listed solvents, and wastes containing these chemicals are more likely to represent any vaguely identified ''solvent wastes.'' In other damage incidents, waste categorization for buried drums or landfilled hazardous materials was not possible. Based on a review of identified damage instances, no single instance of damage was identified that could be tied to use of the target chemicals as a solvent.

Most of the damage cases found for these solvents resulted from disposal that took place many years ago, typically well before 1980. Waste management regulations have changed dramatically since the RCRA regulations were first promulgated (1980), and the damage cases appear to reflect management practices that are no longer legal or likely. Therefore, these cases do not provide a useful guide to current or future disposal practices that may occur.

Also, many of the 14 chemicals are produced in relatively large volumes, and only small percentages of most are used as a solvent. Some of the chemicals have been widely used as chemical intermediates (e.g., phenol) or as ingredients in products (e.g., cumene in paint and 2-methoxyethanol in jet fuel). The presence of others may often be traced to their occurrence as an impurity in other chemicals (e.g., p-dichlorobenzene is a common impurity in the listed solvent 1,2-dichlorobenzene). Therefore, EPA believes that reported contamination is more likely to arise from nonsolvent uses. Furthermore, the solvent uses identified for the target chemicals studied were typically limited to a few industries, and none of these sectors were represented by facilities reported in the damage case databases.

Many of the damage cases arose from mismanagement at older municipal or industrial landfills, and it is difficult to determine how a chemical may have been used prior to disposal. These sites invariably accepted a wide variety of wastes and were contaminated with many different chemicals. Some of the target chemicals are possible breakdown products from the degradation of other contaminants (e.g., phenol, methyl chloride). Therefore, because the ROD database does not specifically cite the uses of any of the wastes found at the site, the cases did not provide any direct evidence that contamination by any other chemicals evaluated in this listing determination was linked to disposal of spent solvents.

Finally, the 3007 Survey showed that high percentages of most of the nonwastewater residuals reported are classified as hazardous, and are subject to strict regulation under RCRA. Thus, the solvent wastes currently generated generally could not be legally managed in the manner that led to the damage cases (e.g., landfills). Therefore, EPA did not find that the damage cases provided any relevant information on the potential risks posed by solvent wastes. The sections for each target chemical presents a more specific discussion for the damage cases identified.

e. Risk Assessment Results. Sections II.D to II.N present a more specific analysis by each solvent of the waste generation and management information to justify the individual regulatory determinations. Risk assessment evaluations were not conducted for the four chemicals (benzyl chloride, epichlorohydrin, ethylene dibromide, and p-dichlorobenzene) for which EPA found no significant solvent use. The risk tables for each of the remaining 10 constituents indicate the estimated health risk associated with the current and plausible management scenarios. For greater detail, see the listing and risk assessment background documents available in the docket to this rulemaking proposal.

EPA requests comment on all aspects of its listing determinations, including comments pertinent to the adequacy of the data base and the methodology used to evaluate the data, and comments regarding the extent to which EPA has adequately characterized solvent uses, users of the solvents and management practices for the solvent waste streams. EPA is also soliciting comment on the risk assessment methodology and assumptions, including the Agency's rationale for choosing plausible management scenarios.

Comments suggesting changes to the Agency's data base or risk assessment methodology, or to the Agency's listing determination for any of the 14 solvent waste streams, should be accompanied by any relevant data or supporting

information. If EPA receives new data or information during the comment period, EPA may use this information to augment its data base or revise its methodology or assumptions for purposes of the final rule. If EPA receives relevant new information during the comment period on solvent uses, users or management practices for any of the specific solvent wastes addressed in this rulemaking, EPA may revise its individual listing determinations based on this information.

In particular, EPA notes that while a number of these solvents might cause an unacceptable groundwater risk if significant volumes were land disposed in concentrated form, such a scenario does not appear to be plausible. Much of EPA's assessment of the risks from the use of these solvents derives from evidence that such wastes are not likely to be discarded on the land in significant concentrations. Nine of these chemicals are already listed as commercial chemical products and thus cannot be legally land disposed in their unused form without treatment; furthermore, they would be subject to manifesting and other RCRA controls when discarded. Many of the more concentrated wastes are ignitable as generated, or already covered by an existing hazardous waste listing, and are thus subject to RCRA regulation. Solid treatment residuals appear to contain negligible or very low concentrations of these solvents, because of the efficacy of treatment. Wastewaters do not pose significant risk to groundwater or air, because the wastewaters are generated in relatively dilute form, are further diluted in integrated wastewater treatment systems, and then effectively treated in those systems.

If EPA receives comments that leads it to conclude that unregulated land disposal of concentrated wastestreams from the use of these solvents is likely, EPA will consider promulgating a listing to address those concerns. However, EPA currently believes that such a listing should be limited to those circumstances in which significant concentrations causing significant risk are plausible, such as listing only wastes with high concentrations of solvents. EPA would consider that approach in this case, given the analysis presented in this proposal indicating that the existing or plausible waste management scenarios do not pose significant risk. In particular, EPA believes that it may be inappropriate to list the full range of wastes that might otherwise be brought under regulation through application of the mixture and derived-from rule to such waste. EPA invites comment on such an approach.

D. Acetonitrile

1. Industry Identification

Almost all acetonitrile is manufactured as an acrylonitrile by-product. U.S. production of acetonitrile is estimated to be between 8 and 11 million kilograms per year, of which more than 60 percent is believed to be used in solvent applications and about 40 percent in non-solvent applications.

Acetonitrile may be used for many non-solvent purposes such as the production of nitrogen-containing compounds, including amides, amines, higher molecular weight mono- and dinitriles, ketones, isocyanates, and heterocyclic compounds. However, acetonitrile finds its primary use as a solvent in various industries, particularly in the pharmaceutical industry where it is used in the production of drugs and medicinal chemicals.

2. Description of Solvent Usage and Resulting Wastes

a. Solvent Use and Questionnaire Responses. In response to the RCRA 3007 Preliminary Survey of Solvent Use, 178 facilities reported the use of 5.8 million kilograms of acetonitrile as a solvent in 1992. The full RCRA 3007 Survey of Solvent Use Questionnaire was sent to the 74 largest users of the 178 facilities that reported 1992 use of acetonitrile. Most (>94%) of the respondents to the preliminary survey that were not sent the full questionnaire reported using less than 120 kg per year of acetonitrile as a solvent. Some of the facilities sent the 3007 survey used small quantities of acetonitrile, but were included because the total amount of target solvents used was above 1200 kg. The facilities responding to the full 3007 survey reported a 1993 use of 9.3 million kilograms of acetonitrile as a solvent.

Literature searches indicate that acetonitrile is a common, versatile, polar solvent often used as an extraction medium or a recoverable reaction medium. Its high dielectric strength and dipole moment make it an excellent solvent for both inorganic and organic compounds, including polymers. RCRA 3007 Questionnaire responses indicate that acetonitrile is used across a broad range of industries as: a product and equipment wash; the mobile phase in high pressure liquid chromatography (HPLC) at laboratory, pilot, and production scale; a reaction, crystallization, or synthesis medium; an extractant or extractive distillation medium; a diluent; and a dissolution medium.

Its largest use is in the pharmaceutical industry for the production of drugs and medicinal chemicals, where its applications range from laboratory use to pilot production in Food and Drug Administration drug trials to full-scale batch product preparation. It also is used in the organic chemicals industry as an extraction medium and in the petrochemical industry for the separation of butadiene from C_4 hydrocarbons by extractive distillation. Literature searches indicated that acetonitrile may be used in electroplating operations, however, this use was not confirmed.

A detailed discussion of the processes in which acetonitrile is employed is presented in the background document for today's proposal, which is available in the docket (see **ADDRESSES** section).

b. Physical/Chemical Properties and Toxicity. Acetonitrile is a relatively polar compound and is completely miscible in water. Because of its miscibility, it is not expected to form a nonaqueous phase layer in groundwater (NAPL). It has a relatively low boiling point (82 °C), and it has a moderate evaporation rate from water, as evidenced by its Henry's Law Constant (2.007×10^{-5} atm-m^3/mole). Acetonitrile has a high vapor pressure at ambient temperature, and is also flammable and ignitable, with a flash point of 6 °C. Therefore, concentrated residuals from the use of acetonitrile as a solvent are expected to exhibit the characteristic of ignitability.

The octanol-water partition coefficient (Log K_{ow}) for acetonitrile is −0.34; this indicates that acetonitrile has a low tendency to sorb to soil organic matter, and is not expected to bioaccumulate in organisms.

Acetonitrile is not classified as a carcinogen. The chemical has an RfC of 0.05 mg/m^3 and an RfD of 0.006 mg/kg/day; these correspond to an air HBL of 0.05 mg/m^3, and a water HBL of 0.2 mg/L.

c. Waste Generation, Characterization, and Management. The respondents to the RCRA 3007 Survey of Solvent Use Questionnaire reported a combined total of greater than 9.15 billion kilograms of residuals generated from processes using acetonitrile as a solvent. The vast majority of the residuals, 9.13 billion kilograms, were wastewaters usually containing low to negligible concentrations of acetonitrile (average concentrations less than 1%). The remaining residuals, a combined total of greater than 15.0 million kilograms, are nonwastewaters containing widely varying levels of acetonitrile. Some

nonwastewaters usually have low to negligible solvent concentrations, such as filter-related materials, containers, and wastewater treatment sludges; other nonwastewaters, such as spent solvents and heavy ends from solvent recovery operations, typically have high levels of acetonitrile and/or other organic wastes.

Nearly all wastewater residuals (98.4% by waste volume, and 79% by loading) are managed in on-site wastewater treatment systems; treatment in most cases included biological treatment in tanks, with a small amount (0.1% by loading, or 294 kg total) reported to be sent to surface impoundments. Some wastewaters (1.6% by volume, or 21% by loading) also went to Subtitle C deepwell injection as a hazardous waste. Very small quantities were reported to be discharged to Publicly Owned Treatment Works (POTWs).

In 1993, more than 67 percent by volume of all nonwastewater residuals containing acetonitrile were classified as hazardous waste. However this percentage is skewed by one large volume (4.2 million kg, or 30% of nonwastewaters) of nonhazardous wastewater treatment sludge that had negligible acetonitrile concentration (see discussion below). Nonwastewaters with high organic content, such as spent solvent and heavy ends/distillates, were managed by some form of thermal treatment, including incineration, energy recovery in a BIF, or blending for fuel for future energy recovery.

Based on the reported waste volumes and concentrations of the acetonitrile in the wastes, loadings of acetonitrile in the waste were calculated by multiplying the volume (in kilograms) by the concentration (in percent) and dividing by 100 (percent conversion). This calculation provides the total loading of acetonitrile in the waste that is available for potential release via management. Table 1 presents the reported volumes and acetonitrile loadings by management practice for the wastes that contain spent acetonitrile from use as a solvent.

EPA believes that the waste management practices reported in the questionnaires by industry capture the plausible management scenarios of concern for acetonitrile wastes. The full RCRA 3007 Questionnaire was sent to 74 facilities, and information was obtained concerning the management of over 250 wastestreams. The Agency believes that this sample of facilities revealed likely waste management practices that are or could be used in the management of these wastes. Therefore, EPA does not think it is warranted to project other management practices that could be employed. Further, the Agency anticipates the loadings to these different practices will not change significantly over time.

To assess the potential risks for management of acetonitrile wastes, EPA selected several management practices for modeling. To represent the thermal treatment process (incineration, industrial boilers, fuel blending, critical oxidation), EPA chose an industrial boiler. To account for risks from the accumulation of residuals for thermal treatment, EPA modeled an uncovered storage tank. To assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tank.

The Agency considered potential risks that might arise from the land-based management of acetonitrile wastes, i.e., deepwell injection, landfills, and surface impoundments. EPA does not believe that these management practices present significant risk for the following reasons.

Concerning deepwell injection, as noted above, all of the disposal by this method occurs in Subtitle C units that are permitted to accept hazardous waste. Therefore, EPA does not believe that these wastes present any significant risk. Nearly all of the wastes sent to deepwell injection were classified as hazardous waste; only a total of 97 kg of wastes (containing 2 kg of solvent) sent to deepwell injection were nonhazardous. Thus, the Agency believes that future disposal of nearly all of these wastes will continue to be in a permitted unit, and EPA did not evaluate this practice further.

EPA examined the practice of landfilling acetonitrile wastes and found that only four out of the 254 waste streams containing spent acetonitrile were reported to go to landfills. Of these four wastes, three were sent to Subtitle C landfills (2 after treatment, and 1 was small volume of filter material), and one wastewater treatment sludge was sent to a Subtitle D landfill. While the volume of the one waste sent to the Subtitle D landfill was relatively large (4.2 million kg), the sludge was reported to contain only a ''trace'' of miscellaneous organics. This specific sludge, and wastewater treatment residuals in general, are unlikely to contain significant levels of acetonitrile, because the chemical is removed by such treatment due to its volatility and susceptibility to biodegradation (>98%; see the U.S. EPA RREL Treatability Database). EPA also considered whether the practice of landfilling spent acetonitrile wastes was likely to increase, but could find no evidence to support this. To the contrary, the facility that had been sending the largest acetonitrile loading to a Subtitle C landfill (454 kg loading, 45,400 kg volume), indicated that it had ceased this practice during 1993 and started sending the waste for thermal treatment because of the waste's fuel value.

Only three wastes with spent acetonitrile were reported to go to surface impoundments, and these were impoundments that were part of a wastewater treatment train. In all cases the annual loadings were very small (294 kg total), and acetonitrile levels would be negligible (i.e., orders of magnitude below the health-based level) after mixture with other wastewaters at the headworks prior to entering an impoundment. (For example, the largest loading reported treated in a surface impoundment, 230 kg per year, was mixed into a wastewater flow of more than 30 million gallons a day; thus, the estimated concentration at the headworks would be less than 0.04 ppm, well below the health-based level of 0.2 ppm.) Furthermore, acetonitrile is removed during wastewater treatment, such that any acetonitrile in treatment impoundments would be further reduced. Except for these three wastes, all reported wastewater treatment of acetonitrile wastes occurs in tanks. EPA has no reason to believe this practice would change, given the capital and regulatory costs associated with siting a new surface impoundment, and the investments already made in tank-based treatment systems.

Overall, EPA concludes that nonwastewaters with all but negligible acetonitrile loadings are usually managed as hazardous under Subtitle C (because of the ignitability of these wastes, and/or the common practice of mixing with other hazardous solvent wastes), or recycled onsite. Wastewaters are primarily handled either as hazardous through deepwell injection, or treated in tank-based wastewater treatment systems.

TABLE 1.—GENERATION STATISTICS FOR ACETONITRILE

Management Practice	# of facilities	# of streams	Total volume (kg)	Total loading (kg)
Incineration	33	79	[1] <6,000,000	[1] <700,000
BIF	11	73	2,410,944	1,650,764
Fuel Blending	19	46	622,870	337,437
WWT—Tank	15	29	8,988,222,016	206,159
WWT—Surface Impoundment	3	3	95,118	294
POTW	4	6	16,911	16
Landfill, Subtitle C	2	3	72,755	459
Landfill, Subtitle D	1	1	4,181,818	trace
Deepwell Injection, Hazardous	4	8	150,123,631	54,706
Critical Oxidation	1	2	315,000	18,900
Distillation/Fractionation	3	4	771,966	429,300

[1] Exact value is withheld because some of the data for this practice are claimed as confidential business information.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 2.

Using bounding assumptions, the Agency estimated that management of acetonitrile residuals in a boiler could result in an inhalation HQ of 0.0000006. Risk based on bounding assumptions for the other plausible mismanagement scenarios (an aerated tank and on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for these scenarios.

The estimated high-end risk assessment with plausible mismanagement of acetonitrile wastes in an aerated tank is an inhalation HQ of 0.002, which indicates minimal risk through the inhalation pathway for this scenario. However, the high-end risk estimate for the plausible mismanagement of acetonitrile wastes through on site accumulation resulted in an inhalation HQ of 200; the central tendency HQ was 0.09. This was the only management scenario with a high-end HQ greater than 1.

EPA then conducted a third phase of risk screening on these acetonitrile wastes modeled in accumulation tanks. The 3007 survey data showed that the vast majority of these wastes are either characteristically hazardous (generally ignitable) or co-managed with other listed hazardous wastes. Since these wastes are already regulated under RCRA Subtitle C, this third phase of risk screening focused on the risk from waste streams that are not currently being managed as hazardous. A bounding analysis of these wastes resulted in an HQ of 0.44, revealing risks below the HQ level of concern.

Since all the other acetonitrile waste streams also showed hazard quotients below 1, EPA concluded that the risks from the portion of wastes that are nonhazardous are not significant. EPA also believes that the risk assessment overstates the risks from tank storage because the bounding and high end risk analyses assumed that all of the stored solvent would volatilize from the tank; such an assumption is very conservative because these wastes are being accumulated for thermal treatment or fuel blending.

TABLE 2.—RISK ASSESSMENT RESULTS FOR ACETONITRILE

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters:			
• Treatment in Aerated Tanks	0.00002	2.4	0.002
Nonwastewaters:			
• On Site Accumulation:			
—Phase I & II (all wastes)	0.09	346	200
—Phase III (nonhazardous wastes)	.....	0.44	.....
• Boiler	.....	0.00000061	.....

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. Acetonitrile has been identified as a constituent of concern at one site investigated using the Hazard Ranking System (HRS). However, there are no sites that have undergone a Record of Decision (ROD) that identify acetonitrile as a constituent. In no instances has the use of acetonitrile as a solvent been linked to environmental damage in either the ROD or HRS databases.

c. Conclusion. EPA believes that acetonitrile does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of acetonitrile as a solvent should not be listed as hazardous waste under 40 CFR 261.31. While risk analyses indicate some potential risk from air releases of acetonitrile stored in open tanks, EPA believes that this risk would not be significant for these residuals because most of the nonwastewater residuals stored are regulated as hazardous waste. Some of those wastes are already listed; others are regulated as hazardous waste because of their characteristics (generally ignitability). EPA believes

that regulating the wastes this way is protective of human health and the environment. The wastes which are regulated as characteristically hazardous are being managed through incineration, an efficient mechanism for destroying the hazardous constituents. EPA believes that it is implausible that these wastes will be managed in an unsafe manner (as explained in section II–D–2–c). Regulations controlling air releases from storage of hazardous waste have recently been promulgated. (See December 6, 1994 at 59 *FR* 62896, and February 9, 1996 at 61 *FR* 4903). These regulations address volatile organic compounds at levels much less (i.e., 100 ppm) than those that yielded the potential risks for acetonitrile. Furthermore, EPA believes that the risk assessment overstated the risks presented by storage in tanks because the scenario assumed that all of the stored solvent would escape; this seems unlikely if the waste is being stored expressly to send for further treatment or fuel blending. Therefore, given that nearly all of the nonwastewater acetonitrile residuals are either already being handled as hazardous, or contain negligible amounts of the solvent, EPA believes that spent solvent residuals are not likely to pose a significant hazard to human health and the environment.

E. 2-Methoxyethanol (2-ME)

1. Industry Identification

In 1993, 24 million kilograms of 2-methoxyethanol, also known as ethylene glycol monomethyl ether, or 2-ME, were produced. Data on imports and exports are not available. 2-Methoxyethanol is widely used as a jet fuel additive to inhibit icing in fuel systems, with 76 percent consumed for this purpose. It is used as a chemical intermediate (9 percent in 1993) in the production of the specialty plasticizer di-(2-methoxyethyl) phthalate (DMEP); as a chemical intermediate in the manufacture of esters such as 2-methoxyethyl acetate; and in the synthesis of the dimethyl ethers of ethylene glycol.

The remaining 14 percent of 2-ME is used in a variety of applications, including the solvents use discussed in greater detail below.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 111 facilities reported the use of 15.4 million kilograms of 2-methoxyethanol as a solvent in 1992. Of the 111 facilities reporting use in 1992, 47 were sent the RCRA 3007 Solvent Use Questionnaire (nearly all of the remaining facilities used less than 100 kg). In the RCRA 3007 Questionnaire, 35 facilities reported the use of 3.7 million kilograms of 2-methoxyethanol, a decline from the previous year. This is primarily attributable to the elimination of use of 2-methoxyethanol at 12 facilities, and a large drop in use at five other facilities. In addition, EPA determined from the responses to the full questionnaire that some uses reported in the semiconductor industry and by TSDs were not solvent uses.

Information from the RCRA 3007 Questionnaire indicates that 2-methoxyethanol is used for cleaning purposes, including removal of product buildup from tanks and removal of polymer film during the production of integrated circuits. 2-Methoxyethanol is used as a reaction medium for the production of various products. It can be used as a diluent in the production of lacquers and coating formulations that subsequently are applied to a substrate, which may be aluminum, metal, or nonwoven fiber. It also is a diluent in the production of specialty chemicals. Additionally, 2-methoxyethanol is used in specialized laboratory analyses.

2-Methoxyethanol is used in the formulation of a photoresist system used in the semiconductor manufacturing industry. Where the 2-methoxyethanol is part of the formulation of purchased photoresist, its use does not constitute solvent use. However, in at least one case, 2-methoxyethanol is used as a solvent for cleaning the edge of the semiconductor wafer after application of the photoresist; this use does meet the RCRA definition of solvent use. Discussions with the semiconductor industry and engineering site visits to many of these facilities leads EPA to believe that the use of 2-methoxyethanol, along with other lower order glycol ethers, is being phased out.

Literature searches indicated that 2-methoxyethanol has the potential for use as a solvent in: the manufacture of polymeric materials, composite membranes, resins, and recording materials; the preparation of specialty chemicals; electroplating; and dye processing. However, the Agency could find no confirmation of these uses from the RCRA 3007 Questionnaire. In light of the Agency's extensive investigation of actual solvent use in connection with the 3007 Survey, EPA believes it is reasonable to consider only those solvent uses actually confirmed by he survey results.

b. Physical/Chemical Properties and Toxicity. 2-Methoxyethanol is miscible in water, and is useful as a solvent for polar and nonpolar chemicals. 2-Methoxyethanol is flammable when exposed to heat or open flame, and is ignitable, with a flash point of 39.4°C. Residuals with high concentrations of 2-methoxyethanol are expected to exhibit the characteristic of ignitability. With a vapor pressure of 6.2 mm Hg at 20°C, 2-methoxyethanol is volatile, and the Henry's Law Constant for 2-methoxyethanol is 2.9×10^{-3} atm-m^3/mole, indicating that 2-methoxyethanol rapidly evaporates from water.

The Log K_{ow} for 2-methoxyethanol is -0.77, indicating that 2-methoxyethanol has a low tendency to sorb to soil organic matter and bioaccumulate in organisms. In the atmosphere, 2-methoxyethanol is subject to photodegradation, with a half-life of less than one day.

2-Methoxyethanol is not classified as a carcinogen. The chemical has an RfC of 2×10^{-2} mg/m^3 and a provisional reference dose (RfD) of 5.7×10^{-3} mg/kg/day. The corresponding air HBL is 2×10^{-2} mg/m^3 and the provisional water HBL is 0.2 mg/L.

c. Waste Generation, Characterization, and Management. Twenty-three facilities reported a total of 3.14 billion kg of waste generated in 1993. The vast majority (>99%) of the residuals generated are wastewaters contaminated with relatively low concentrations of 2-methoxyethanol (average concentration of 0.01%). These wastes also include 2.1 million kg of nonwastewaters, containing variable amounts of 2-methoxyethanol, including spent solvents, sludges, and containers and rags. Where 2-methoxyethanol is incorporated into the final product, wastes may include off-specification materials and tank cleanout wastes.

In 1993, over 96% percent by volume of nonwastewaters were reported to be hazardous. A large fraction (70%) of the nonwastewaters was recovered through distillation or fractionation, and most of the rest (29%) was managed by some type of thermal treatment, either by incineration, energy recovery in a boiler, or fuel blending. The wastewaters containing spent 2-methoxyethanol were all reported to be treated in tank-based wastewater treatment systems.

Based on the reported waste volumes and concentration of the 2-methoxyethanol in the wastes, loadings of 2-methoxyethanol were calculated by multiplying the volume (in kilograms) by the concentration (in percent) and dividing by 100 (percent conversion). This calculation provides the quantity of 2-methoxyethanol in the waste that is available for potential release via management. Table 3 presents the

reported volumes and 2-methoxyethanol loadings by management practice for the wastes that contain spent 2-methoxyethanol.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios of concern for 2-methoxyethanol. EPA surveyed all significant users of this solvent, and collected information on the waste management practices for 54 wastestreams. The Agency believes that these facilities provide a good indication of all likely waste management practices. Furthermore, with the use of this chemical as a solvent declining, new management practices are unlikely to occur.

To assess the potential risks for management of 2-methoxyethanol wastes, EPA selected several management practices for modeling. To represent thermal treatment (incineration, industrial boilers, fuel blending), EPA chose an industrial boiler. To account for risks from the accumulation of residuals in tanks, EPA modeled an uncovered storage tank. Finally, to assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tank.

None of the 56 wastestreams were reported to go to land disposal in landfills or impoundments. Solids containing spent solvent are incinerated, and wastewaters are all treated in tanks. Wastewater treatment sludges generated do not contain significant levels of 2-methoxyethanol, because the chemical is efficiently removed by such treatment due to its volatility. In the face of the existing practices, EPA finds it implausible that high organic wastes or aqueous liquids currently sent to thermal treatment would be managed in a landfill. Essentially all of the nonwastewater residuals that contain spent 2-methoxyethanol are thermally treated or recovered, and more than 96% of this treatment is as a hazardous waste. The large percentage of spent 2-methoxyethanol wastes that are already hazardous are precluded from land disposal in Subtitle D units, and no evidence exists to suggest that any wastes containing spent 2-methoxyethanol would be placed in a landfill. Any change from the current practice of treatment of wastewaters in tanks to treatment in

TABLE 3.—WASTE STATISTICS FOR 2-METHOXYETHANOL

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	11	20	297,522	52,839
Energy Recovery	6	13	129,369	57,760
Fuel Blending	5	11	224,530	104,444
WWT-Aerated Tanks	6	6	3,139,049,350	452,030
WWT-Other Tanks	2	2	2,558	486
Fractionation/Distillation	1	2	1,463,068	14,631
Storage (for unspecified offsite hazardous treatment)	2	2	14,802	704

Impoundments also seems unlikely given the associated costs for such a change. As noted above, however, this solvent is easily removed from wastewaters by volatilization, therefore even if treatment in an aerated impoundment occurred, it would be expected to rapidly remove the solvent and make any releases to groundwater unlikely.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 4.

Using bounding assumptions, the Agency estimated that management of 2-methoxyethanol wastewater in an aerated tank could result in an inhalation HQ of 0.98 and management of nonwastewater in a boiler could result in an inhalation HQ of 6×10^{-8}. Risk based on bounding assumptions for the other plausible mismanagement scenario (on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for these scenarios.

The estimated high-end risk assessment for plausible mismanagement of 2-methoxyethanol wastes through on site accumulation is an inhalation HQ of 16. This was the only management scenario where the high-end HQ was higher than 1.

EPA then conducted a third phase of risk screening on these 2-methoxyethanol wastes in open accumulation tanks. Since wastestreams which are hazardous are already being regulated under RCRA Subtitle C, this third phase of risk screening focused on the risk from waste streams that are not currently being managed as hazardous.

EPA's data showed no waste streams in this management scenario which were nonhazardous; all of the waste streams were already being managed under RCRA Subtitle C. Since all the other 2-methoxyethanol waste streams showed hazard quotients below 1, EPA concluded that there was insignificant risk reduction which could be gained by listing 2-methoxyethanol as a hazardous waste. EPA also believes that the risk assessment overstates the risks from tank storage because the bounding and high end risk analyses assumed that a large fraction of the stored solvent would volatilize from the tank; such an assumption is very conservative because these wastes are being accumulated for thermal treatment or fuel blending.

TABLE 4.—RISK ASSESSMENT RESULTS FOR 2-METHOXYETHANOL

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters:			
• Treatment in Aerated Tanks	3×10^{-9}	0.98	.....

TABLE 4.—RISK ASSESSMENT RESULTS FOR 2-METHOXYETHANOL—Continued

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Nonwastewaters:			
• On Site Accumulation			
—Phase I & II (all wastes)	0.007	59	16
—Phase III (non-haz wastes)	.....	None	
•Incineration	.....	6×105^{-8}	.....

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document *Assessment of Risks from the Management of Used Solvents.*

b. Environmental Damage Incidents. 2-Methoxyethanol has been detected at three Superfund sites, however, based on a review of identified damage instances, no single instance of damage was identified that could be tied to use of 2-methoxyethanol as a solvent. The RODs report that 2 methoxyethanol was detected, however, no concentrations were provided for any of the three sites. Two of the sites were landfills that accepted a wide variety of industrial and municipal wastes. One landfill ceased operation in 1980, and received liquid wastes (including latex and ''spent organic solvents'') from 1968–1972. The other landfill received municipal wastes from 1969 until 1984, and drummed industrial wastes between 1973 and 1975. The use of the 2-methoxyethanol prior to disposal at these landfills is impossible to ascertain. In both cases a wide variety of other contaminants were found. The third facility was a used oil recycling site that ceased operations in 1981, and was primarily contaminated by oil, PCBs, metals, and VOCs. 2-methoxyethanol has been used as a jet fuel additive, and it is likely that 2-methoxyethanol is present in used oil from this source.

The solvent uses identified for 2-methoxyethanol (e.g., pharmaceutical manufacturing, coatings and lacquers, electronics, photographic chemicals, and laboratory use) are not represented in any of the facilities identified as having 2-methoxyethanol contamination. Therefore, it is not likely that the damage incidents identified were the result of mismanagement of 2-methoxyethanol following use as a solvent, and the Agency did not consider the damage incidents relevant to the listing determination. In addition, disposal of the wastes that are the potential sources of 2-methoxyethanol occurred well before RCRA regulations were in place. The vast majority of the nonwastewater solvent wastes identified in the 3007 Survey were reported to be hazardous waste, and are now subject to strict regulation. Therefore, the kind of disposal that led to these Superfund sites cannot occur for nearly all nonwastewaters resulting from solvent use of 2-methoxyethanol.

c. Conclusion. EPA believes that 2-methoxyethanol does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of 2-methoxyethanol as a solvent should not be listed as hazardous waste under 40 CFR 261.31. While risk analyses indicate some potential risk from air releases of 2-methoxyethanol stored in open tanks, EPA believes that this risk from residuals that are currently regulated hazardous waste would not be significant because all of the nonwastewater residuals were stored as regulated hazardous waste. Therefore, these wastes are already hazardous, and listing is not necessary. Regulations controlling air releases of volatile organics from storage of hazardous waste have recently been promulgated. (See 59 *FR* 62896, December 6, 1994, and February 9, 1996 at 61 *FR* 4903). Furthermore, EPA believes that the risk assessment overstated the risks presented by storage in tanks because the scenario assumed that a large fraction of the stored solvent would escape; this seems unlikely if the waste is being stored expressly to send for further treatment or fuel blending. For the foregoing reasons, spent solvent residuals are not likely to pose a significant hazard to human health and the environment.

F. Methyl Chloride

1. Industry Identification

In 1993, U.S. production of methyl chloride was estimated to be 218.8 million kilograms, of which 78 percent was used as an intermediate in the manufacture of chlorosilanes; 16 percent was used in the production of quaternary ammonium compounds, agricultural chemicals, and methycellulose; approximately 3 percent was exported; and the remainder is used for other purposes, including use as a solvent.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 32 facilities reported the use of a combined total of 1.04 million kilograms of methyl chloride in 1992. In the RCRA 3007 Questionnaire, seven facilities reported the use of 623,645 kilograms of methyl chloride as a solvent. This reduction occurred because EPA determined from responses to the full questionnaire that methyl chloride was not used as a solvent in some facilities. Of the seven facilities, three reported the use of small quantities in laboratories, primarily for liquid/liquid extraction. The major use was reported by two butyl rubber manufacturers, which accounted for greater than 99% of the solvent use of methyl chloride.

Literature searches indicated that methyl chloride may be used commercially as a liquid (under pressure) and has solvent applications in the production of butyl rubbers, which was confirmed by the Questionnaire respondents. Other potential solvent uses include the dealumination of aluminosilicates; a polymerization medium; a blowing agent for Styrofoam; a medium for the synthesis of tert-chlorine-ended polyisobutylenes with allyltrimethylsilane; and a specialty solvent in laboratory applications. These uses were not confirmed by the RCRA 3007 Questionnaire respondents.

b. Physical/Chemical Properties and Toxicity. Methyl chloride has a moderate solubility in water of 0.648 percent by weight at 30°C. Methyl chloride is a gas under ambient conditions, and will have a high rate of evaporation from water to air, as evidenced by its Henry's Law Constant of 4.5×10^{-2} atm-m^3/mole. It has a Log K_{OW} of 0.91, indicating that methyl chloride has a low potential for absorption to soil and bioaccumulation in organisms.

Methyl chloride can biodegrade anaerobically. It will also hydrolyze in water to give methanol; at ambient temperatures, the half life in water is estimated to be about one year. Just considering hydrolysis alone, this means that in less than 10 years the concentration of methyl chloride would be decreased by a thousand-fold.

Methyl chloride is a suspected carcinogen. Using an oral carcinogen slope factor (CSF) of $1.3x10^{-2}$ (mg/kg/day)$^{-1}$, EPA calculated that exposure to a water concentration of 0.003 mg/L for 70 years would correspond to a cancer risk of 1×10^{-6}. The inhalation CSF is 1.8×10^{-6} (ug/m^3)$^{-1}$, which corresponds to a 10^{-6} risk HBL in air of 6×10^{-4} mg/m^3.

c. Waste Generation, Characterization, and Management. Seven respondents to the RCRA 3007 Questionnaire reported the generation of more than 1.19 billion kg of residuals resulting from the use of methyl chloride as a solvent; nearly all of the waste from the production of butyl rubber. The vast majority of this volume was wastewaters (1.1 billion kg), with relatively low solvent concentrations. The remaining wastes included residuals generated from treatment of the wastewaters (89 million kg of wastewater treatment sludge and 6.6 million kg of sludge/ash from further treatment of the sludge), and 0.52 million kg of spent solvent.

The wastewaters were all sent to wastewater treatment systems, which included aeration/biological treatment in tanks or surface impoundments. The vast majority (89 million kg) of the nonwastewaters were further treated and ultimately landfilled (6.6 million kg). The balance of the nonwastewaters (0.52 million kg) were managed by thermal treatment (incineration or energy recovery in a boiler/industrial furnace).

Based on the reported waste volumes and concentration of the methyl chloride in the wastes, loadings of methyl chloride to the environment were calculated by multiplying the volume (in kilograms) by the concentration (in percent) and dividing by 100 (percent conversion). This calculation provides the quantity of methyl chloride in the waste that is available for potential release via management. Table 5 presents the reported volumes by management practice, and the amount of methyl chloride contained in the wastes.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios for spent methyl chloride wastes. Nearly all of the solvent use of this chemical was accounted for by the two facilities that produce butyl rubber. The other facilities that reported any waste containing methyl chloride reported corresponding loadings that were extremely small (2 kg total loading). One company owns both butyl rubber plants, and is the sole producer of butyl rubber in the country. Given this highly specialized solvent use of this chemical, the Agency is confident that no other significant waste management practice for the associated wastes exists.

To assess the potential risks associated with the management of these wastes, EPA chose to model an industrial boiler to represent the thermal treatment practices (incineration and fuel blending). To account for storage prior to thermal treatment, EPA modeled the accumulation of spent methyl chloride in an open storage tank. To assess risks from wastewater treatment, EPA also modeled potential releases from wastewater treatment in a surface impoundment.

TABLE 5.—WASTE STATISTICS FOR METHYL CHLORIDE RESIDUALS

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	4	4	89,296,310	2
Energy Recovery (BIFs)	1	1	225,000	2,250
Land Disposal	1	2	6,550,550	<5.5
WWT—Tanks	1	1	60,000,000	600
WWT—SI	1	1	1,036,517,000	175,000

EPA considered the potential risks that might arise from the land-based management of methyl chloride wastes in landfills and surface impoundments. EPA does not believe that these management practices present a significant risk for the following reasons.

Two wastes were reported sent to Subtitle D landfills. The larger volume waste (6.55 million kg) is a residual from a sludge treatment unit, which includes an incinerator, that was sent off-site for stabilization and placement in a landfill. The residual was reported to have only a ''trace'' of hydrocarbons. Methyl chloride is readily treated by biodegradation and volatilization in an aerated system with activated sludge. Removal efficiencies for methyl chloride from industrial wastewater treatment systems are reported to be high (greater than 98.9%; see the U.S. EPA RREL Treatability Database). Therefore, it is unlikely that any appreciable level of the chemical remains in this treatment residual. The other waste sent to a landfill was a small volume of spent desiccant (550 kg), containing relatively little solvent (<5.5 kg). Neither of these wastes is expected to present any significant risk due to negligible amounts of solvent present.

One other major wastestream (89 million kg) was reported as wastewater treatment sludge, however, as noted previously, this waste was actually the waste that entered the sludge treatment unit, where it was treated to give the 6.55 million kg sludge/ash wastestream noted above. For the reasons described previously, EPA believes that these very low-concentration wastes are typical of the types of wastes that are likely to be landfilled. Therefore, EPA believes that no significant risks are likely to arise from landfills for methyl chloride wastes. Furthermore, methyl chloride will also undergo hydrolysis in water with a half-life of less than one year, and hydrolysis would be significant for any methyl chloride reaching the groundwater. For example, over a ten year period (which would correspond to rapid movement off-site from a landfill in groundwater), the concentration of methyl chloride would drop to less than 0.001 of the level leaving the landfill.

The two wastewater streams reported were sent to wastewater treatment systems; one included treatment in tanks, the other used treatment in an aerated surface impoundment. The wastewater sent to the impoundment was reported to contain relatively high amounts of methyl chloride (175,000 kg); thus, EPA examined this process in detail for risks from possible releases to air and groundwater. Using the

estimated loading of methyl chloride reaching the surface impoundment, EPA modeled the potential risks from air releases (see risks given in the next section). The Agency does not believe that risks are likely to arise from releases to groundwater because the impoundment is reported in the 3007 survey to be a permitted hazardous waste management unit. EPA confirmed that the unit is regulated under RCRA. The unit is subject to the applicable regulations in 40 CFR 264 including: groundwater monitoring, corrective action, and closure requirements. Therefore, EPA does not believe that methyl chloride wastewaters in this unit present any significant risk via groundwater releases. Furthermore, methyl chloride is readily treated by biodegradation and volatilization in wastewater treatment systems in general; the impoundment in question is an aerated system with activated sludge that should efficiently remove methyl chloride. Removal efficiencies for methyl chloride from industrial wastewater treatment systems are reported to be high (greater than 98.9%; see the U.S. EPA RREL Treatability Database).

EPA also considered the possibility that the combustion of methyl chloride might lead to formation of toxic products of incomplete combustion (PICs) due to its chlorine content. The amount of methyl chloride in the wastes that go to incineration is relatively low. The actual loading in the wastes incinerated was reported to be 2 kg, and these wastes were reported to go to hazardous waste incineration. The waste sent offsite for combustion in a BIF had a higher loading (2,250 kg), however this waste was hazardous due to ignitability (due to high levels of hydrocarbons such as hexane present) and the toxicity characteristic (due to the presence of benzene). Therefore, the wastes sent to combustion that contained an appreciable level of methyl chloride were burned as a hazardous waste. EPA recently proposed rules to address releases from hazardous waste combustion units (see 61 FR 17358, April 19, 1996). Therefore, EPA does not believe that combustion products are likely to be of concern for the thermal treatment of methyl chloride wastes.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a risk for each plausible mismanagement scenario. Methyl chloride is a suspected carcinogen, and EPA used cancer risk estimations rather than hazard quotients (the latter are used to measure the risk for non-carcinogenic effects). Where the risk exceeds 10^{-6} and approaches 10^{-4}, exposure poses risks of concern to human health and the environment. The results of these analyses, given in terms of the increase in life-time cancer risk, over are shown in Table 6.

Using bounding assumptions, the Agency estimated that management of methyl chloride residuals in a boiler could result in an inhalation risk of 3.3×10^{-14}. Risk based on bounding assumptions for the onsite accumulation mismanagement scenario exceeded an inhalation risk of 10^{-6}, and EPA then conducted high end and central tendency risk analyses for this scenario. The estimated high end risk assessment with plausible mismanagement of methyl chloride wastes by onsite accumulation in an uncovered tank resulted is an inhalation risk of 4×10^{-6}. The estimated high end risk assessment exceeds 1×10^{-6} only with the pairing of two high end parameters for (1) the waste stream and receptor distance and (2) the waste stream and storage duration. The estimated central tendency risk was 2×10^{-10}. EPA believes that the risk assessment overstates the risks from tank storage because the bounding and high end risk analyses assumed that all of the stored solvent would volatilize from the tank; such an assumption is very conservative because these wastes are being accumulated for fuel blending.

Risk for air releases from an aerated impoundment were estimated using bounding-type assumptions, in addition to the relatively large size of the one impoundment in question. EPA estimated the risk from the aerated impoundment to be 7×10^{-6}. The Agency did not attempt to calculate a high end risk for the impoundment, because the use of more realistic parameters was expected to reduce the risk level below levels of concern. For example, the closest residence to the only impoundment in question is 2300 feet, far beyond the bounding assumption distance of 100 meters. In addition, the surface impoundment is regulated as a hazardous waste management unit, and is therefore subject to the recently promulgated regulations limiting releases from impoundments (see Subpart CC in 40 CFR Part 264).

TABLE 6.—RISK ASSESSMENT RESULTS FOR METHYL CHLORIDE

Plausible mismanagement practice	Risk		
	Central tendency	Bounding	High end
Nonwastewaters:			
• On Site Accumulation	2×10^{-10}	1.8×10^{-5}	4×10^{-6}
• Incineration	.....	3.3×10^{-14}	.....
Wastewaters:			
• Surface Impoundment	.....	7×10^{-6}	.....

All risks are cancer risk for direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. Methyl chloride has been detected at three Superfund sites. Two of the sites (a gravel pit and a landfill) ceased operation before 1980, and therefore disposal occurred prior to promulgation of the RCRA regulations. The third site was a manufacturing facility which was in operation from 1902 to 1982, indicating that all but a limited amount of disposal predated the RCRA controls. The major activities at this third site included milling, refrigeration, circuit board manufacturing, and photo processing. The primary constituents of concern at all three sites are a variety of volatile organic compounds, and it is possible that methyl chloride may be a degradation product from other chlorinated chemicals. The ROD database indicates that methyl chloride has contaminated the ground water at two of the sites (no information on

concentration levels or affected media is available for the third site).

Wastes deposited at the manufacturing site were reported to include cleaning solvents used in circuit board manufacturing processes, but the ROD database does not cite the uses of any of the wastes found at the site. Most important, however, this site was also used as a refrigeration plant, and methyl chloride was used as a refrigeration agent in the past. Because methyl chloride is a gas under ambient conditions, EPA does not believe that it is likely that wastes at these sites were derived from the use of methyl chloride as a solvent. The 3007 Survey indicated that the only significant use of this chemical as a solvent is in the butyl rubber industry, and none of the damage cases were from that industry. Furthermore, the vast majority of methyl chloride is used as a synthetic reactant in industrial chemical processes, with very little used as a solvent. Therefore, EPA did not consider these damage cases in its listing decision for methyl chloride.

c. Conclusion. EPA believes that methyl chloride does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of methyl chloride as a solvent should not be listed as hazardous waste under 40 CFR 261.31. Under certain circumstances, the risk assessment indicates some potential risk from onsite accumulation of methyl chloride residuals. However, the estimated high-end cancer risk was 4×10^{-6}. This risk is at the low end of EPA's range of concern for listing (10^{-6} to 10^{-4}). Furthermore, EPA believes that the risk assessment overstated the risks presented by storage in tanks because the scenario assumed that all of the stored solvent would escape; this seems unlikely if the waste is being stored expressly to send for further treatment or fuel blending. In addition, EPA believes that this risk would not be significant for these residuals because they are regulated hazardous wastes. The air release from aerated wastewater treatment basins is a more plausible occurrence, and EPA calculated a bounding risk of 7×10^{-6}, also at the low-risk end of the Agency's range of concern. However, as noted previously, the wastewaters generating the potential risk due to aeration in an impoundment are going to a unit that is a permitted hazardous waste management unit. Thus, in both cases, the recently promulgated regulations limiting air releases from storage tanks and impoundments would apply (see Subpart CC, 40 CFR Part 264).

Furthermore, potential air releases of methyl chloride from the key waste generators are being addressed by other EPA programs. Under the authority of the Clean Air Act, the Agency investigated air releases of methyl chloride by butyl rubber manufacturers. EPA proposed standards (see Standards for HAP Emissions from Process Units in the Elastomers Manufacturing Industry, 60 FR 30801, June 12, 1995) that address releases from these facilities, including storage tanks and wastewater treatment systems. The Agency believes that air regulations that result from this activity can lead to a more integrated control of risks than the limited hazardous waste regulations that could be imposed. For all of these reasons, therefore, the Agency has made a determination that wastes resulting from the use of methyl chloride as a solvent should not be listed as hazardous waste under 40 CFR 261.31.

G. Phenol

1. Industry Identification

In 1993, U.S. production of synthetic phenol was estimated to be 1.6 billion kilograms, of which 34 percent was consumed in the production of phenolic resins (particularly phenol-formaldehyde resins), 34 percent was consumed in the production of bisphenol-A, 15 percent was consumed in the production of caprolactam and adipic acid, 3 percent was consumed in the production of aniline, 5 percent was consumed in the production of alkyl phenols, and 5 percent was consumed in the production of xylenols. Five percent was exported and the remaining 2 percent was used in other ways, including as a solvent.

2. Description of Solvent Usage and Resulting Wastes

a. Solvent Use and Questionnaire Responses. In response to the RCRA § 3007 Prequestionnaire of Solvent Use, 99 facilities indicated that 2.21 million kg of phenol were used as a solvent at the site in 1992. Thirty-one facilities reported a 1993 combined use of 1.43 billion kilograms of phenol as a solvent in response to the RCRA 3007 Questionnaire of Solvent Use. This large increase was due to a change in reporting by one facility resulting in an increased use of over one billion kilograms. The facility produces its own phenol for use and did not report this use correctly in the Prequestionnaire. This facility (a petroleum refining facility) reported the production of native phenol as a byproduct of other processes. This native phenol is not reflected in the synthetic phenol production totals, although its use is reflected in 1993 totals. EPA surveyed all petroleum refineries and is confident that additional quantities of native phenol are not produced and subsequently used as a solvent in this industry.

Literature searches indicated that phenol may be used as an extraction solvent in petroleum refining, especially in the processing of lubricating oils; in biological applications; in other chemical industry and laboratory processes; and as a reagent in chemical analysis. Minor uses may include use as a general disinfectant, either in solution or mixed with slaked lime, etc., for toilets, stables, cesspools, floors, drains, etc.; for the manufacture of colorless or light-colored artificial resins, and in many medical and industrial organic compounds and dyes.

According to the respondents to the RCRA 3007 Questionnaire of Solvent Use, phenol is used as a solvent for four primary purposes: as an extraction medium in the production of lube oil stock using the ''Duo-Sol'' process; as a coating remover in the microelectronic and automotive industries; as a reaction or synthesis medium; and as a solvent in laboratory analysis.

The vast majority (>99.9%) of the solvent use of phenol is in the petroleum industry. The Duo-Sol process is used widely in the extraction of lube stock and fuel from crude oil residuals. In this process, phenol acts as an extraction medium to separate the extract (subsequently sent to fuels refining) and the raffinate (subsequently sent to a dewaxing unit). The extract and raffinate enter a second set of extraction units, where phenol is removed. The phenol is dried and forwarded to the first extractor along with makeup phenol and crude residual. The Duo-Sol solvent does not become spent. Losses are attributable to attrition to product and minor loss to wastewater. Phenolic wastewater is removed from the system and forwarded to waste management.

Although the industries are quite different, the use of phenol as a coating remover by the microelectronic and automotive industry is similar. Phenol is used to remove photoresist in the production of semiconductors. In the automotive industry, phenol is used in combination with other solvents to remove coatings from automotive wheels. It is also used (in conjunction with other solvents) in the aircraft maintenance industry for depainting purposes.

Finally, much smaller uses are attributable to the use of phenol as a reaction or synthesis medium in the

organic chemicals industry and as a laboratory solvent across a variety of industries.

b. Physical/Chemical Properties and Toxicity. Phenol is a solid at room temperature. It has a solubility in water of 80 grams per liter at 25°C, indicating that it is highly soluble. With a vapor pressure of 35 mm Hg at 25°C, phenol is moderately volatile at ambient temperatures. The Henry's Law Constant of 1.3×10^{-6} atm-m^3/mole for phenol indicates that phenol has a relatively low evaporation rate from water. The Log K_{ow} for phenol is 1.46, indicating that it has a relatively low tendency to sorb to soil organic matter, and a low tendency to bioaccumulate in organisms.

Phenol rapidly biodegrades to CO_2 and water in soil, sewage, fresh water, and sea water. This biodegradation will slow under anaerobic conditions, but still occurs in groundwater.

Phenol is a Class D carcinogen and no carcinogen slope factor has been developed. Phenol has an provisional RfC of 2×10^{-2} mg/m^3 and an RfD of 6×10^{-1} mg/kg/day; these correspond to an air HBL of 2×10^{-2} mg/m^3 and a water HBL of 20 mg/L. These health-based numbers are provisional and have not undergone external peer review. The Agency plans to complete an external peer review of these health-based numbers prior to issuing a final determination. EPA requests comments on the appropriateness of the provisional numbers, and seeks any additional data on the toxicity of phenol.

c. Waste Generation, Characterization, and Management. Twenty-four facilities reported the generation of residuals from the use of phenol as a solvent totaling 52.5 million kilograms. The largest portion of these wastes, 52.3 million kilograms, or 99.6 percent, were phenolic wastewaters containing from 0.01% to almost 8 percent phenol. The remaining nonwastewater residuals were high organic wastes, primarily spent solvent (197,000 kg), and small volumes of filter media, spent carbon, and debris containing low levels of phenol. In 1993, 92 percent of the nonwastewaters were classified as hazardous waste, and 8 percent was classified as nonhazardous.

Facilities generating high-volume wastewaters managed these wastes via wastewater treatment. These facilities consist predominantly of petroleum refineries and have sophisticated wastewater treatment systems in place that include primary treatment, biological treatment, and off-site secondary treatment. Facilities managed nonwastewaters through some form of thermal treatment, either blending of the residual for fuel or burning in a boiler or incinerator.

Based on reported waste volumes and concentration of phenol in the wastes, loadings of phenol to each waste management practice were calculated. Table 7 presents the total volumes of wastes and total solvent content for the waste management practices.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios for spent phenol wastes. Nearly all of the solvent use of this chemical (>99.9%) was attributed the petroleum industry, which EPA surveyed. Furthermore, other minor uses were also examined in detail. Given that the major uses of this solvent were very specialized (e.g., extraction of lube oil), the Agency is confident that no other significant waste management practices for the associated wastes are likely to exist.

To assess the potential risks for management of phenol wastes, EPA selected several management practices for modeling. To represent the thermal treatment process (incineration, industrial boilers, fuel blending), EPA chose an industrial boiler. To account for risks from the accumulation of residuals for thermal treatment, EPA modeled an uncovered storage tank. To assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tank.

TABLE 7.—WASTE STATISTICS FOR PHENOL RESIDUALS

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	14	28	103,055	23,110
Fuel Blending	4	4	97,526	12,764
Energy Recovery (BIFs)	1	1	9	<0.001
Storage	1	1	153	92
WWT—Tanks	1	1	40,000,000	3,600
WWT—SI	3	3	12,323,813	355,758

The Agency considered potential risks that might arise from the land-based management of phenol wastes, i.e., landfills, and surface impoundments. EPA does not believe that these management practices present significant risk for the following reasons.

None of the 38 wastestreams containing spent phenol were reported to go to a landfill. This is not surprising given that there are few phenol wastes that are generated as solids. The only waste solids that contained any significant level of phenol was spent carbon, and this was sent for regeneration or incineration. EPA also could find no reason to suggest that the practice of landfilling was likely to increase. Wastewater treatment residuals may be landfilled, but are unlikely to contain significant levels of phenol, because the chemical is removed by such treatment due to its susceptibility to biodegradation (>99%; see the U.S. EPA RREL Treatability Database). Wastes with higher organic content were thermally treated, and most (about 92%) of the thermal treatment was in hazardous waste units or fuel blending. Therefore, none of the wastes with significant phenol concentration are likely to be placed in a landfill.

Three wastewaters with spent phenol were reported to go to surface impoundments, and these were impoundments that were part of a wastewater treatment train. In two of these cases, the phenol concentration was below the water health-based level after mixing at the headworks, prior to reaching the surface impoundment. The phenol concentration for one wastewater sent to an off-site wastewater treatment system was reported to range from the HBL (20 mg/L) up to an order of magnitude higher (180 mg/L) at the headworks. However, as noted above, this level of phenol is expected to be efficiently treated (>99%) by the activated sludge, such that little phenol would be available for release to the groundwater. In general, facilities have effluent limitations for chemicals such as phenol, so that treatment must occur

prior to discharge. In addition, any phenol is quite susceptible to biodegradation, so that any of the chemical released to the groundwater is expected to undergo biodegradation, further reducing any potential risk. Information on the specific surface impoundment receiving the phenol wastewater of concern also indicates that groundwater releases from the unit are not likely to be significant. The ground water in the immediate area was reported to be a class 3 aquifer, which is not considered a potential source of drinking water, and the closest private or public well was reported to be 4,900 feet from the unit. Therefore, due to the dilution at the headworks, the susceptibility of phenol to biodegradation, and the specific facts related to the surface impoundment of concern, EPA does not believe that the treatment of phenol wastes in surface impoundments presents a significant risk.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 8.

Using bounding assumptions, the Agency estimated that management of phenol residuals in a boiler could result in an inhalation HQ of 1.1×10^{-5}. Risk based on bounding assumptions for the other plausible mismanagement scenarios (an aerated tank and on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for these scenarios.

The estimated high-end risk assessment with plausible mismanagement of phenol wastes in an aerated tank is an inhalation HQ of 0.002, and on site accumulation is an inhalation HQ of 0.5. These results indicate minimal risk through the inhalation pathway for these scenarios.

TABLE 8.—RISK ASSESSMENT RESULTS FOR PHENOL

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters			
• Treatment in Aerated Tanks	2×10^{-7}	3.3	0.002
Nonwastewaters:			
• On Site Accumulation	0.005	12	0.5
• Incineration	.....	1.1×10^{-5}	.....

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. EPA investigated damage incidents at which phenol was an identified contaminant at the site. Based on a review of identified damage instances, no single instance of damage was identified that could be tied to use of phenol as a solvent. Phenol is identified as a contaminant at 25 sites in the ROD database, however, ''phenol'' is often listed as a class of compounds. Listings where the contaminant was listed as ''phenols'' or ''phenolics'' were not considered by EPA further, unless a specific concentration of phenol was identified.

Furthermore, most of the damage cases found for phenol were for sites at which disposal took place many years ago. Only seven facilities identified with phenol contamination appeared to have operated since the RCRA regulations were first promulgated (1980), and even at these sites, disposal typically occurred decades before 1980 and ceased in the early 1980's. These seven cases included: two landfills, three chemical manufacturers (including a pesticide manufacturer and a textile dye manufacturer), one cement production facility, and one chemical waste storage and processing facility.

Levels of phenol reported at these seven sites showed maximum concentrations of 20 ppm in soils, 8 ppm in groundwater, and 0.47 ppm in surface water. However, a wide variety of chemicals were present at these sites, and it is possible that the phenol present may have been a contaminant or degradation product of these other chemicals. No damage case was identified that could be tied to use of phenol as a solvent. In addition, phenol is produced in relatively large volumes, and only a very small fraction is used as a solvent, except for the specialized use of phenol in the petroleum industry (none of these sites were related to the petroleum industry). The solvent uses identified for phenol were limited to several types of industries (petroleum refining, electronics, and automotive industries), and none of these sectors were represented by facilities identified as having phenol contamination on site.

The 3007 Survey showed that, of the phenol nonwastewater residuals reported to be generated in 1993, 92% were classified as hazardous. Therefore, most of the wastes currently generated from use of phenol as a solvent could not be legally managed under RCRA in the same manner as the wastes were at the contaminated sites. For all of the above reasons, therefore, EPA does not believe that the damage cases provide any relevant information on the potential risks posed by phenol solvent wastes.

c. Conclusion

EPA believes that phenol does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of phenol as a solvent should not be listed as hazardous waste under 40 CFR 261.31. The Agency's risk assessment indicates that spent phenol residuals are not considered to pose a substantial risk under the plausible management scenarios assessed. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment. High-end analysis revealed air risks from wastewater treatment and storage tanks were below levels of concern. Furthermore, some of the assumptions made in these assessments are likely to have resulted in an overestimation of risk. For example, the storage tank scenario assumed the phenol would volatilize; this seems somewhat unlikely if the waste is being accumulated for subsequent incineration or fuel blending. Also, wastes with higher organic content were thermally treated, and most (92%) treatment was in hazardous waste units or fuel blending.

H. 2-Ethoxyethanol Acetate (2–EEA)

1. Industry Identification

The 1993, U.S. production of 2-ethoxyethanol acetate, also known as ethylene glycol monoethyl ether acetate, was 22.3 million kilograms. Data indicate a rapidly declining market for 2-ethoxyethanol acetate. In 1983, total estimated use was 59.5 million kilograms. By 1987, that had dropped to 36.8 million kilograms and dropped again in 1988 to 31.8 million kilograms. Exports have increased steadily and now represent 79 percent of the production in 1993. 2-Ethoxyethanol acetate is used primarily for its solvent properties. Its most extensive use, until recently, has been in the formulation of photoresist used in the manufacture of semiconductors. While the formulators of photoresist would be considered solvent users for the purposes of this study, photoresist users generally are not. Semiconductor manufacturers may fall within the scope of this industry study if they use 2-ethoxyethanol acetate to clean the edges of semiconductors. However, the use of a formulation that contains a solvent, such as photoresist, does not constitute use of the solvent.

The use of 2-ethoxyethanol acetate in the semiconductor industry is being phased out. Other solvents, including n-methyl pyrollidone, n-butyl acetone, and higher order glycol ethers, such as propylene glycol ethers, are being used as substitutes.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 121 facilities reported the use of 1.16 million kilograms of 2-ethoxyethanol acetate. In the RCRA 3007 Questionnaire, 22 facilities reported the use of 0.27 million kilograms of 2-ethoxyethanol acetate. This decrease reflects the elimination from further analysis of 14 facilities that are semiconductor manufacturers whose sole use of 2-ethoxyethanol acetate is due to its presence in photoresist. Semiconductor manufacturers who reported the use of 2-ethoxyethanol acetate as an edge cleaner or for other cleaning purposes were included in the use study. One additional facility was eliminated from study because its sole use of 2-ethoxyethanol acetate was due to its presence in a paint used in coating operations.

The facilities who reported the use of 2-ethoxyethanol acetate in the RCRA 3007 Questionnaire use it most often for tank cleaning or degreasing in conjunction with processes that incorporate the solvent into the products. 2-Ethoxyethanol acetate is used for tank cleaning at three facilities between batch manufacturing operations in which 2-ethoxyethanol is one of the materials in the formulation. At one facility, the tank clean out is incorporated into the next product batch, thus reducing losses to waste. Another facility uses 2-ethoxyethanol acetate to clean filter housings.

2-Ethoxyethanol acetate is used to adjust the viscosity of adhesives applied during the manufacture of circuit boards. A mixture of 2-ethoxyethanol acetate and methylene chloride (already regulated as Hazardous Waste Numbers F001 and F002) is used to clean curtain coating equipment in the same process. A small number of facilities in the semiconductor manufacturing sector use 2-ethoxyethanol acetate for thinning of photo lithographic materials. This 2-ethoxyethanol acetate is not part of the formulation of prepurchased photoresist and, thus, meets the Agency's definition of solvent.

2-Ethoxyethanol acetate also is used as a reaction, synthesis, or dissolution medium for raw materials in the chemical manufacturing sector. Finally, 2-ethoxyethanol acetate is used to a small extent in laboratories for specialty analyses. Literature searches suggested other uses for 2-ethoxyethanol acetate, however these uses were not confirmed by the industry study, and were not considered in EPA's listing analysis.

b. Physical/Chemical Properties and Toxicity. 2-Ethoxyethanol acetate has a solubility in water of 22.9 wt. percent in water, indicating that the solvent is highly water soluble. With a vapor pressure of 2.0 mm Hg at 20°C, 2-ethoxyethanol acetate is highly volatile and can be expected to volatilize to air from open tanks and containers. The Henry's Law Constant for 2-ethoxyethanol acetate is 1.9×10^{-6} atm-m^3/mole, indicating that it has a moderate rate of evaporation from water. The Log K_{ow} for 2-ethoxyethanol acetate is not known, however, given its high water solubility, the chemical is not expected to sorb to soils or bioaccumulate in organisms.

2-Ethoxyethanol acetate is not classified as a carcinogen. The chemical has an RfC of 7×10^{-2} mg/m^3 and a RfD of 2×10^{-2} mg/kg/day. These values correspond to an air HBL of 7×10^{-2} mg/m^3 and a water HBL of 0.7 mg/L.

c. Waste Generation, Characterization, and Management. The 22 facilities reported the generation of 1.2 million kilograms of residuals from the use of 2-ethoxyethanol acetate as a solvent. The residuals include 0.95 million kilograms of nonwastewaters containing variable levels of 2-ethoxyethanol acetate. These facilities also reported the generation of 0.25 million kilograms of wastewaters containing 2 percent or less of 2-ethoxyethanol acetate.

Essentially all (99.8%) of the nonwastewaters in 1993 were reported to be characteristically hazardous or mixed with listed hazardous waste, and therefore were managed as hazardous waste through some form of thermal treatment (fuel blending or combustion in a boiler or incinerator). The wastewaters were managed in aerated tanks, quiescent tanks, and through discharge to a Publicly Owned Treatment Works (POTWs).

Based on reported waste volumes and concentrations of 2-ethoxyethanol acetate in the waste, loadings of 2-ethoxyethanol acetate were calculated. Table 9 presents the total volumes of wastes and total solvent content for the different waste management practices.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios for spent 2-ethoxyethanol acetate wastes. The use of 2-ethoxyethanol acetate has been decreasing dramatically in recent years, thus, other generators of this solvent waste are unlikely to exist. To assess the potential risks for management of 2-ethoxyethanol acetate wastes, EPA selected several management practices for modeling. To represent the thermal treatment process (incineration, industrial boilers, fuel blending), EPA chose an industrial boiler. To account for risks from the accumulation of residuals for thermal treatment, EPA modeled an uncovered storage tank. To assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tank.

None of the 38 wastestreams were reported to go to land disposal in landfills or impoundments. Solids (rags, containers, lab wastes) containing spent solvent were all incinerated, and wastewaters are all treated in tanks. In the face of the existing practices, EPA finds it implausible that high organic wastes or aqueous liquids currently sent to thermal treatment would be managed in a landfill. The large percentage of spent 2-ethoxyethanol acetate wastes that are already hazardous is precluded from land disposal in Subtitle D units, and no evidence exists to suggest that any wastes containing spent 2-ethoxyethanol acetate would be placed in a landfill. Any change from the current practice of treatment of wastewaters in tanks to treatment in impoundments also seems unlikely given the associated costs for such a

change. However, this solvent is removed from wastewaters by volatilization, therefore even if the practice occurred, treatment in an aerated impoundment would be expected to rapidly remove the solvent and make any releases to groundwater unlikely.

TABLE 9.—WASTE STATISTICS FOR 2–ETHOXYETHANOL ACETATE RESIDUALS

Management Practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	9	14	641,275	23,239
Energy Recovery (BIFs)	7	13	167,547	146,554
Fuel Blending	8	9	146,612	8,569
WWT—Tanks	2	2	3,161	3
POTW	1	1	243,500	4,871

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 10.

Using bounding assumptions, the Agency estimated that management of 2-ethoxyethanol acetate residuals in a boiler could result in an inhalation HQ of 2.2×10^{-8} and management in an aerated tank could result in an HQ of 0.006. Risk based on bounding assumptions for the other plausible mismanagement scenario (on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for this scenario.

The estimated high-end risk assessment with plausible management of 2-ethoxyethanol acetate wastes in an uncovered onsite accumulation tank yielded an inhalation HQ of 0.7. This result indicates minimal risk through the inhalation pathway for this scenario.

TABLE 10.—RISK ASSESSMENT RESULTS FOR 2-ETHOXYETHANOL ACETATE

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters:			
• Treatment in Aerated Tanks	.....	0.006	
Nonwastewaters:			
• On Site Accumulation	0.003	9	0.7
• Incineration	.....	2.2×10^{-8}	

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. 2-Ethoxyethanol acetate has been detected at one Superfund site. The ROD database indicates that 2-ethoxyethanol acetate has contaminated the soil, sediments, and ground water at the site, although no information on the concentration level is available. Wastes deposited at the landfill site include industrial and municipal waste, including what was termed spent organic solvents. However, no disposal occurred at the site after 1980, and the site would reflect management practices that may no longer be representative. Essentially all of the nonwastewater solvent wastes identified in the 3007 Survey were reported to be hazardous waste, and are subject to strict regulation. Furthermore, the ROD database does not specifically cite the uses of any of the wastes found at the site. Therefore, EPA did not factor this damage case into its listing determination.

c. Conclusion. EPA believes that 2-ethoxyethanol acetate does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of 2-ethoxyethanol acetate as a solvent should not be listed as hazardous waste under 40 CFR 261.31. The use of 2-ethoxyethanol is declining rapidly in industry, and the Agency believes that this trend will continue. As discussed above, risk bounding estimates indicate that 2-ethoxyethanol acetate spent solvent residuals are not considered to pose a substantial risk or potential hazard to human health and the environment through the pathways and plausible mismanagement scenarios assessed. Furthermore, essentially all of the nonwastewaters are already incinerated as hazardous waste or sent to fuel blending. Risks from wastewater treatment were low and this practice bounded out. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment.

I. Furfural

1. Industry Identification

In 1993, U.S. production of furfural was estimated to be 39.5 million kilograms. An estimated 85 percent was consumed as an intermediate in the production of furfural alcohol and as an intermediate in the production of tetrahydrofuran. Other non-solvent uses of furfural may include the manufacture of cold-molded grinding wheels, where phenol and furfural react to form fusible, soluble resins that may be thermally set in the presence of hexamethylenetetramine. Less than 1 percent of furfural produced in 1993 was exported. The remaining 14 percent is used for other purposes, including 4 percent identified as solvent use by Questionnaire respondents.

2. Description of Solvent Usage and Resulting Wastes

a. Solvent Use and Questionnaire Responses. In response to the RCRA 3007 Prequestionnaire, 32 facilities indicated that 3.87 million kg of furfural were used as a solvent at their site in 1992. Eight facilities reported use of furfural as a solvent in response to the 3007 Questionnaire of Solvent Use, with a total 1993 use of 2.46 million kilograms. This apparent decrease was due to large volumes reported in the prequestionnaire that EPA determined from the full questionnaire were not used as a solvent

Based on the responses to the Questionnaire, essentially all (>99.99%) of the use of furfural as a solvent is in the petroleum industry for lube oil extraction. The furfural refining process, developed by Texaco, Inc., involves extraction of raw lubricating stock with furfural at temperatures generally below 121°C to yield refined oil extract. The undesirable aromatic and olefinic components of the oil are selectively dissolved by furfural and separated from the desired paraffinic and naphthionic components. In practice, oil enters near the bottom of a countercurrent extraction column, and furfural is applied at the point near the top. The extract is removed from the bottom of the column with the bulk of the furfural. Furfural is separated from the extracted material and recovered for reuse by flash distillation followed by steam distillation. Furfural-water mixtures from the steam distillation are readily separated in a decanter by drawing off the lower layer which consists of about 92 percent furfural and 8 percent water. This layer is subsequently dried for reuse. Furfural losses are generally 0.03 percent or less per cycle. EPA believes that the trend for furfural use is not favorable. The industry is moving toward the use of n-methyl pyrollidone for lube oil extraction. The remaining solvent use reported was in specialty applications in laboratory analyses.

Literature searches indicated other potential uses for furfural, however Questionnaire responses did not indicate use of furfural for these purposes.

b. Physical/Chemical Properties and Toxicity. Furfural has a solubility in water of 83 grams per liter at 20°C, indicating that it is highly soluble in water. Furfural has a vapor pressure of 1 mm Hg at 20°C indicating that furfural is highly volatile. The Henry's Law Constant for furfural is 8.1×10^{-5} atm-m^3/mole, indicating that furfural has a moderate evaporation rate from water. The Log K_{ow} is not available at this time, but the high water solubility suggests that furfural is not likely to sorb strongly to soils or bioaccumulate in organisms. However, the aldehyde functional group in furfural is fairly reactive and may lead to oxidation and degradation in the environment.

Furfural is not classified as a carcinogen. It has an RfC of 0.05 mg/m^3 and an RfD of 0.003 mg/kg/day. These values correspond to HBLs of 0.05 mg/m^3 for air, and 0.1 mg/L for water.

c. Waste Generation, Characterization, and Management. The seven responding facilities reported a combined volume of just under 177.5 million kilograms of waste, containing less than 0.1 percent furfural, generated from processes using furfural as a solvent. Furfural wastes, as reported in the RCRA 3007 Questionnaire of Solvent Use, are predominantly (>99.9%) wastewaters that are managed in wastewater treatment systems. These high-volume wastes are not likely to be managed in another manner. One facility has a surface impoundment in their wastewater treatment system and two treat the wastewater in tanks. Much smaller quantities of nonwastewater furfural wastes were reported and these were incinerated as hazardous waste.

Based on reported waste volumes and concentration of furfural in the wastes, loadings of furfural to each waste management practice were calculated. Table 11 presents the total volumes of wastes and total solvent content for the waste management practices.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios for spent furfural wastes. Nearly all of the solvent use of this chemical (>99.9%) was attributed to the petroleum industry, which EPA surveyed. Given that the major use of this solvent was very specialized (e.g., extraction of lube oil), the Agency is confident that no other significant waste management practices for the associated wastes are likely to exist.

To assess the potential risks for management of phenol wastes, EPA selected several management practices for modeling.

TABLE 11.—WASTE STATISTICS FOR FURFURAL RESIDUALS

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Wastewater Treatment—Surface Impoundment	1	2	24,732,124	15,940
Wastewater Treatment—Tank	3	3	152,738,784	165,848
Incineration	1	2	6,220	0.07

To represent the thermal treatment process (incineration), EPA chose an industrial boiler. To account for risks from the accumulation of residuals for thermal treatment, EPA modeled an uncovered storage tank. To assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tanks and surface impoundments.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure may pose a risk to human health and the environment. The results of these analyses are shown in Table 12.

Using bounding assumptions, the Agency estimated that management of furfural residuals in a boiler could result in an inhalation HQ of 2.4×10^{-14} and on site accumulation could result in an inhalation HQ of 1.2×10^{-5}. For management of furfural wastewater in a surface impoundment using bounding assumptions (e.g., no biodegradation), the Agency estimated an inhalation HQ of 0.69, and an ingestion HQ of 0.8.[1] Risk based on bounding assumptions for the other plausible mismanagement scenario (an aerated wastewater treatment tank) exceeded an inhalation HQ of 1, and EPA then conducted high

[1] The bounding estimate for ingestion of contaminated groundwater from a surface impoundment assumed a leachate factor of 1, a dilution and attenuation factor of 10, and ingestion of 2 liters per day of water and a 70 kilogram body weight. After mixing with other wastewaters in the offsite treatment system, the initial concentration of furfural entering the impoundment was 0.80 mg/L.

end and central tendency risk analyses for these scenarios.

The estimated high end risk assessment with plausible mismanagement of furfural wastes in an aerated wastewater treatment tank resulted in an inhalation HQ of 0.0008. This result indicates minimal risk through the inhalation pathway for this scenario.

TABLE 12.—RISK ASSESSMENT RESULTS FOR FURFURAL

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters:			
• Treatment in Aerated Tanks	2×10^{-4}	7.9	0.0008
• Treatment in Surface Impoundment	.....	0.69 (inhalation). 0.8 (ingestion).	
Nonwastewaters:			
• On Site Accumulation	.....	1.2×10^{-5}.	
• Incineration	.....	2.4×10^{-14}.	

All risks are direct inhalation, unless otherwise noted. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. Furfural has been identified as a constituent of concern at one site investigated using the Hazard Ranking System (HRS). However, there are no sites with a Record of Decision (ROD) that identify furfural as a constituent. The reason for the absence of furfural may be due to its breakdown in the environment prior to the ROD investigation. In no instance has the use of furfural as a solvent been linked to environmental damage in either the ROD or HRS databases.

c. Conclusion. EPA believes that furfural does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of furfural as a solvent should not be listed as hazardous waste under 40 CFR 261.31. Risk analyses indicate that furfural spent solvent residuals do not pose a substantial risk or potential hazard through the pathways assessed. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment.

J. Cumene

1. Industry Identification

In 1993, U.S. production and imports of cumene totaled 2.24 billion kilograms, of which 1.5 percent is exported. The major non-solvent use of cumene is in the production of phenol and co-product acetone, which utilizes nearly 95 percent of the available cumene. Three percent is used either in the production of poly(alpha-methyl styrene) or for unknown purposes, which may include use as a component in aviation gasoline to improve the octane rating or use as a solvent.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Response. In the RCRA 3007 Prequestionnaire of Solvent Use, 67 facilities reported the use of 1.19 million kilograms of cumene in 1992. In response to the RCRA Questionnaire, nine facilities reported the use of a combined total of 0.60 million kilograms of cumene in 1993. Four other facilities were commercial treatment, storage, and disposal facilities that only received cumene wastes, and were eliminated from consideration. EPA also determined that a large amount of cumene reported as solvent use actually was cumene contained in purchased products.

The major solvent use of cumene is as a reaction medium for chemical production; this accounted for 82% of the total solvent use. The other major use of cumene was for de-inking or paint removal in the commercial printing, automotive, and aviation industries. Solvents used for de-inking and paint removal generally contain small amounts (1 to 3%) of cumene that are less than the 10 percent before use criterion in the existing spent solvents regulations (See 40 CFR 261.31(a)). Finally, cumene is used in small amounts as a reaction medium in laboratory experiments.

b. Physical/Chemical Properties and Toxicity. Cumene has a solubility in water of 50 mg/L at 20°C, indicating that it is only slightly soluble in water. It has a vapor pressure of 3.2 mm Hg at 20°C, indicating that it is highly volatile under ambient conditions and can become an air pollutant. The Log K_{ow} for cumene is 3.66, indicating that cumene has a moderate tendency to sorb to soils and some ability to bioaccumulate in organisms. Cumene is non-persistent in water due to volatilization, with a half-life of less than two days.

Cumene is not classified as a carcinogen. It has a water HBL of 1 mg/L, based on a reference dose of 0.04 mg/kg/day. The HBL for air based on the RfC is 9×10^{-3} mg/m^3.

Shortly before today's action was published, an industry group (The Cumene Panel of the Chemical Manufacturers Association) submitted a letter with information related to the toxicity of cumene. The letter cited the group's comments on another EPA proposal (Hazardous Waste Identification Rule; 60 FR 66344, December 21, 1995), which included extensive technical information concerning the toxicity of cumene. EPA will evaluate this information, along with information submitted by commenters, as it relates to this listing determination.

c. Waste Generation, Characterization, and Management. Nine facilities reported a combined generation of 224 thousand kilograms of residuals from the use of cumene as a solvent. The majority of these wastes (>70%; 160 thousand kg) are collected as vapors and sent directly to on-site combustion; this accounts for the vast majority (>95%) of the cumene loading in all of the wastes that are generated from use as a solvent. Other wastes include spent solvent and process solids that are sent for recovery, incinerated as hazardous, or stored for fuel blending. Small amounts of process wastewaters are sent to wastewater treatment systems, and the process sludges are sent to a landfill.

Based on reported waste volumes and concentration of cumene in the wastes, loadings of cumene were calculated. Table 13 presents the volumes and loadings reported for each management practice.

EPA believes that the waste management practices reported in the questionnaires represent the plausible management scenarios for spent cumene. The uses of cumene as a solvent are very limited and other significant generators of this solvent waste are unlikely to exist.

To assess the potential risks for management of cumene wastes, EPA selected several management practices for modeling. To represent the thermal treatment process (incineration, industrial boilers, fuel blending), EPA chose an industrial boiler. To account for risks from the accumulation of residuals for thermal treatment, EPA modeled an uncovered storage tank. To assess risks arising from wastewater treatment, EPA modeled treatment in an aerated wastewater treatment tank.

Only one cumene waste was reported to go to a landfill, wastewater treatment sludges, and the cumene concentration was not reported. However, the cumene was used in small quantities in this case, so that the maximum amount of solvent that could be in the sludge would be <28 kg. The amount actually in the sludge is expected to be much less after wastewater treatment. Such a very small amount of cumene is highly unlikely to present any risk in a landfill. Furthermore, cumene use in this case was at a level (1.7%), far below the 10% level used to define the currently listed solvents, suggesting that this particular waste is not derived from solvent use per se, but is essentially an impurity in the solvent mixture being used. Given the limited use of cumene as a solvent, and the minor volumes reported, EPA believes that the practice of landfilling will not increase. To the contrary, except for wastewaters, nearly all wastes generated are being treated as hazardous, suggesting that any change to Subtitle D landfills is implausible.

TABLE 13.—WASTE STATISTICS FOR CUMENE

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	3	3	14,620	2,242
Boiler/Industrial Furnace	1	1	160,088	128,070
Wastewater Treatment-Tank	1	1	(1)	<28
Wastewater Treatment-Surface Impoundment	1	1	4,738	<47
Landfill	1	1	1,631	<28
Storage Only	1	1	3,670	1,468
Recovery	3	2	39,117	1,379

[1] Not reported.

One waste containing spent cumene was reported to go to a surface impoundment as part of a wastewater treatment train. However, the annual loading was very small (<47 kg) and cumene levels would be negligible (i.e., orders of magnitude below the health-based level) after mixture with other wastewaters at the headworks prior to entering an impoundment. Furthermore, cumene volatilizes relatively quickly from water and is efficiently removed during wastewater treatment (>97%; see U.S. EPA RREL Treatability Database); thus any cumene reaching treatment impoundments would be further reduced. All wastewaters generated from use of cumene as a solvent appear to contain very low levels of cumene, therefore EPA believes treatment in a surface impoundment is unlikely to present a significant risk, even if the practice were to increase.

Finally, EPA also considered that spent cumene wastes have the potential to form non-aqueous phase liquids (NAPLs) that might move as a separate phase above the ground water table. These NAPLs may present special problems, especially in assessing their transport and potential impact. Unlike all the other target solvents that are miscible or very soluble in water and are not likely to form NAPLs in groundwater, cumene's water solubility is relatively low, and cumene could theoretically form NAPLs. However, EPA believes that NAPL formation from cumene used as a solvent is highly unlikely because such uses are very limited, and the cumene loading to land-based disposal was minimal (<28 kg to landfills).

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 14.

Using bounding assumptions, the Agency estimated that management of cumene residuals in a boiler could result in an inhalation HQ of 2.8×10^{-7}, management in an aerated tank could result in an inhalation HQ of 0.03. Risk based on bounding assumptions for the other plausible mismanagement scenario (on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for these scenarios.

The estimated high end risk assessment with plausible mismanagement of cumene wastes by on site accumulation in an uncovered tank resulted is an inhalation HQ of 0.2. This result indicates minimal risk through the inhalation pathway for this scenario.

TABLE 14.—RISK ASSESSMENT RESULTS FOR CUMENE

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Wastewaters:			
• Treatment in Aerated Tanks		0.03.	
Nonwastewaters:			
• On Site Accumulation	0.02	3	0.2

TABLE 14.—RISK ASSESSMENT RESULTS FOR CUMENE—Continued

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
• Boiler	.....	2.8×10^{-7}	.....

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. Of the three facilities identified with cumene contamination in the Record of Decision Database, only one was reported to be in operation after 1980. This facility was a landfill that operated from 1960 until 1984, when it was abandoned. The facility reportedly received a variety of wastes from 1972 to 1974, including waste paints, painting sludges, and spent solvents. Therefore, the disposal of the potential wastes of concern appears to have occurred well before 1980. The specific solvents disposed at the facility are not identified, making it difficult to link cumene contamination to spent solvents. However, eleven solvents currently listed as hazardous wastes were found as contaminants at the site and may account for the reporting of spent solvent wastes. Furthermore, cumene is a common additive to paint formulations and may be present at the site as a result of the waste paints and painting sludges. Given the limited uses of cumene as a solvent identified in the 3007 Survey, and the likelihood that cumene was present as an ingredient in paint wastes, EPA does not believe that the damage cases are relevant to its listing decision.

c. Conclusion. EPA believes that cumene does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of cumene as a solvent should not be listed as hazardous waste under 40 CFR 261.31. Cumene has some limited use as a solvent, however, data indicate that the concentration of cumene before its use as a solvent is relatively low for the most prevalent use, deinking. As discussed above, risk bounding estimates indicate that cumene spent solvent residuals are not considered to pose a substantial risk or potential hazard to human health and the environment through the pathways assessed. Furthermore, essentially all of the cumene in the solvent wastes generated are thermally treated as hazardous or recovered. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment.

K. Cyclohexanol

1. Industry Identification

The combined production and import data show 10.0 million kilograms of available cyclohexanol, based on 1990 production and 1993 import data. Non-solvent uses of cyclohexanol include cyclohexamine production (54 percent) and pesticide production (14 percent). An unknown amount is used in the oxidation of cyclohexanol to adipic acid (a key ingredient in nylon 66) and cyclohexanol can be used in the production of caprolactam. Some cyclohexanol was reported as solvent use by RCRA 3007 Questionnaire respondents within the petroleum industry. There is no evidence of significant use of cyclohexanol as a solvent outside the petroleum industry.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 37 facilities reported the use of cyclohexanol as a solvent, with a total 1992 use of greater than 100 thousand kg. In the RCRA 3007 Questionnaire, six facilities reported the use of cyclohexanol in 1993, with a total of greater than 1,000 kg and less than 20,000 kg (the exact volume used is confidential business information). The Agency removed a film manufacturer from further study because it was determined that the facility actually uses cyclohexanone, a portion was also found to be reported by a TSD, and other firms responding to the prequestionnaire in 1992 discontinued or reduced use in 1993.

According to data collected in the RCRA 3007 Questionnaire, the major solvent use of cyclohexanol is as an extraction solvent in the production of cyclohexane; however, the cyclohexanol used in this fashion was reported to be recycled in the process. Therefore, wastes generated arose primarily from smaller amounts of cyclohexanol used in specialized laboratory settings.

b. Physical/Chemical Properties and Toxicity. Cyclohexanol has a solubility in water of 56,700 mg/L at 15°C, indicating that it is highly soluble in water. With a vapor pressure of 1 mm Hg at 20°C, cyclohexanol is moderately volatile. The Log K_{ow} for cyclohexanol is 1.23, indicating that cyclohexanol has a low potential for sorbing to soil. The Henry's Law Constant is 4.5×10^{6} atm-m^3/mole indicates that cyclohexanol has a low evaporation rate from water.

Data on the health effects of cyclohexanol are limited. Provisional values for the RfD and RfC have been calculated from one study. The provisional RfC is 6×10^{-5} mg/m^3 and the RfD is 1.7×10^{-5} mg/kg/day. These correspond to HBLs of 6×10^{-5} mg/m^3 for air and 0.0006 mg/L for water. These health-based numbers are provisional and have not undergone external peer review. The Agency plans to complete an external peer review of these health-based numbers prior to issuing a final determination. EPA requests comments on the appropriateness of the provisional numbers, and seeks any additional data on the toxicity of cyclohexanol.

c. Waste Generation, Characterization, and Management. Six facilities initially reported a combined generation of greater than 9 million kilograms of residuals from the use of cyclohexanol as a solvent. However, essentially all of this volume was treatment residuals reported by one facility. This facility reported details for the treatment train that led to a misleading volume as follows. Spent solvent (5,000 kg containing 11 kg of cyclohexanol) is sent to an onsite incinerator; the scrubber water from this hazardous waste incinerator (320 million kg containing no solvent) is then treated in a wastewater treatment system (as hazardous waste) to produce biotreatment sludge (9 million kg containing no solvent). After incineration all subsequent treatment residuals are expected to contain negligible amounts of cyclohexanol. Therefore, only the initial volume going to the incinerator contained cyclohexanol, and this was the only volume from this treatment process that was considered further. The corrected volume of waste generated that contained spent cyclohexanol is actually 44,110 kg, consisting of 43,360

kg of spent solvent (containing 16 kg of cyclohexanol), and 750 kg of filter media reported to contain a ''negligible'' concentration of cyclohexanol. Table 8 presents the waste volumes and loadings of cyclohexanol for the management practices reported.

In 1993, 98.3 percent of the wastes generated with spent cyclohexanol were treated as hazardous, and the remaining 750 kg of filter media as nonhazardous. Table 15 summarizes that volumes and loadings estimated for cyclohexanol.

Nearly all of the cyclohexanol wastes were reported to be incinerated in a hazardous waste BIF. One small wastestream (750 kg) of filter media was reported to go to a landfill, however the concentration was negligible and presumed zero. Given the specialized and limited uses of cyclohexanol as a solvent, EPA does not believe that other wastes or management practices are likely to be significant. Therefore, to assess possible risks from management of cyclohexanol wastes from solvent use, EPA modeled combustion in a boiler to account for incineration, and storage in an open accumulation tank.

TABLE 15.—WASTE STATISTICS FOR CYCLOHEXANOL

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Landfill	1	1	750	(1)
Incineration	4	5	43,360	16

1 Negligible.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure may pose a risk to human health and the environment. The results of these analyses are shown in Table 16.

Using bounding assumptions, the Agency estimated that management of cyclohexanol residuals in a boiler could result in an inhalation HQ of 7.2×10^{-9}. Risk based on bounding assumptions for the other plausible mismanagement scenario (on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for these scenarios.

The estimated high end risk assessment with plausible mismanagement of cyclohexanol wastes by on site accumulation in an uncovered tank is an inhalation HQ of 0.3. This result indicates minimal risk through the inhalation pathway for this scenario.

TABLE 16.—RISK ASSESSMENT RESULTS FOR CYCLOHEXANOL

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Nonwastewaters:			
• On Site Accumulation	0.01	2	0.3
• Incineration		7.2×10^{-9}	

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. Cyclohexanol has been detected at one Superfund site. The ROD database indicates that cyclohexanol has contaminated the soil and ground water at the site. The site was occupied by a waste oil company for ten years, and it was contaminated by a wide variety of chemicals. The ROD database does not specifically cite the uses of any of the cyclohexanol found at the site, and given the rare use of this chemical as a solvent, EPA did not consider this damage case to be relevant to its decision.

c. Conclusion. EPA believes that cyclohexanol does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of cyclohexanol as a solvent should not be listed as hazardous waste under 40 CFR 261.31. It appears there is very limited use of cyclohexanol as a solvent. The residuals generated from the use of cyclohexanol as a solvent contain negligible levels of cyclohexanol and are generally managed by thermal treatment as a hazardous waste. As discussed above, risk bounding estimates indicate that cyclohexanol solvent residuals are not considered to pose a substantial risk or potential hazard to human health and the environment during combustion or storage.

L. Isophorone

1. Industry Identification

Production information from 1995 shows 79.3 million kilograms were produced worldwide. However, only one domestic manufacturer exists. The non-solvent uses of isophorone include use as a raw material in the production of isophorone-derived aliphatic diisocyanates; as an intermediate in the manufacture of 3,5-xylenol-3,3,5-trimethylcyclohexanol and 3,3,5-trimethyl-cyclohexamine; as a starting material and/or emulsifier for insecticides, xylenol-formaldehyde resins, disinfectants, and wood preservatives; and in the synthesis of vitamin E. Although isophorone may be used as a solvent for such purposes as commercial preparations of lacquers, inks, vinyl resins, copolymers, coatings and finishings, ink thinners, and pesticides, and formulators of these products would be considered solvent users for the purposes of this study, the use of these products generally is not. Users of these products may fall within the scope of the industry study only if they use isophorone for cleaning or other solvent purposes.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 30 facilities reported a combined use of greater than 0.3 million kilograms of isophorone. In the RCRA 3007 Questionnaire, six facilities reported a total use of 0.24 million kilograms of isophorone as a solvent in 1993. The largest user of isophorone used a solvent mixture containing significantly less than 10 percent isophorone before use.

Questionnaire respondents indicate that isophorone is used primarily as a diluent cleaning out tank bottoms, and in coating processes. At an aluminum manufacturing facility, isophorone-bearing paint and additional isophorone paint thinner enter the coil coating operation. The coil is coated and waste paint/thinner is drummed prior to fuel blending. At a printing facility, isophorone is mixed with ink and screened onto the material to be printed. The printed material is dried. Waste ink from the operation is drummed prior to off-site fuel blending. A pilot plant in the chemical industry uses isophorone in the coating process, where it is added in the coating steps. Isophorone is used in the manufacture of magnetic disks during the coating process, where isophorone and other raw materials are mixed and coated onto the disk substrate.

b. Physical/Chemical Properties and Toxicity. Isophorone has a solubility in water of 12,000 mg/L at 25°C, indicating that it is highly soluble in water. With a vapor pressure of 0.38 mm Hg at 20°C, isophorone is volatile. The Henry's Law Constant of 6.2×10^{-6} atm-m^3 mole indicates that isophorone has a low to moderate rate of evaporation from water. It has a Log K_{ow} of 1.70 and it is expected to have limited tendencies to sorb to soils and to bioaccumulate. Isophorone can biodegrade.

Isophorone is a suspected carcinogen by ingestion. Using an oral carcinogen slope factor (CSF) of 9.5×10^{-4} (mg/kg/day)$^{-1}$, EPA calculated that exposure to a water concentration of 0.04 mg/L for 70 years would correspond to a cancer risk of 1×10^{-6}. EPA also estimated a provisional air HBL of 4×10^{-3} mg/m^3. These health-based numbers are provisional and have not undergone external peer review. The Agency plans to complete an external peer review of these health-based numbers prior to issuing a final determination. EPA requests comments on the appropriateness of the provisional numbers, and seeks any additional data on the toxicity of isophorone.

c. Waste Generation, Characterization, and Management. Six facilities reported the generation of 0.75 million kilograms of residuals from the use of isophorone as a solvent. The concentration of isophorone in all these residuals ranges from 0.1 percent to 8 percent, except one that was 45 percent. All wastes contained little or no water and were primarily organic liquids. Because of the primary use of isophorone as a diluent for tank bottoms or coating processes, wastewaters were not generated. The solids generated were containers, rags and similar wastes contaminated with solvent. All isophorone residuals are managed by some type of thermal treatment, either fuel blending, energy recovery in a BIF, or incineration.

Based upon reported waste volumes and concentration of isophorone in the wastes, loadings of isophorone were calculated. Table 17 presents the volumes and loadings for each waste management practice.

All of the wastes identified in the questionnaire are managed as hazardous. Most are hazardous because of a characteristic (usually ignitability) or are listed based on other constituents (e.g., F003). One waste volume generated (705 thousand kg) was not hazardous, but was sent to a hazardous waste BIF; this waste resulted from the use of isophorone as a minor ingredient in a diluent to thin heavy end residuals from waste storage tanks to aid pumping the heavy ends to an on-site hazardous BIF. This stream also results from use of isophorone at a concentration of 8.8 percent, which is just below the 10 percent threshold EPA has used in the past to define solvent use in previous solvent listings (e.g., F001). However, EPA included this waste in its evaluation in order to more fully characterize potential risks from these wastes.

TABLE 17.—WASTE STATISTICS FOR ISOPHORONE

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	3	4	12,186	2,248
Boiler/Industrial Furnace	1	2	*705,180	*9,873
Fuel Blending	1	4	36,329	1,816

* Based on two wastestreams in 3007 Questionnaire derived from isophorone at a before use concentration of <10%.

Because of the limited uses of isophorone as a solvent, EPA does not believe that other wastes or management practices are likely to be significant. Therefore, to assess possible risks from management of isophorone wastes from solvent use, EPA modeled combustion in a boiler to account for thermal treatment (incineration, BIFs, and fuel blending), and storage in an open accumulation tank.

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency performed risk bounding and high end risk estimates using the approaches described earlier (see Section II.C) to obtain a hazard quotient (HQ) for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure is expected to pose a risk to human health and the environment. The results of these analyses are shown in Table 18.

Using bounding assumptions, the Agency estimated that management of isophorone residuals in a boiler could result in an inhalation HQ of 6.2×10^{-8}. Risk based on bounding assumptions for the other plausible mismanagement scenario (on site accumulation) exceeded an inhalation HQ of 1, and EPA then conducted high end and central tendency risk analyses for this scenario.

The estimated high end risk assessment with plausible mismanagement of isophorone wastes by on site accumulation in an uncovered tank resulted in an inhalation HQ of 0.6. This result indicates minimal risk through the inhalation pathway for this scenario. Furthermore, this risk resulted from one large wastestream that was used to mobilize tank heavy ends for pumping to an onsite hazardous waste BIF. The resulting waste mixture was not reported stored, and is likely pumped directly to the BIF for combustion, therefore the scenario appears to be unrealistic for this wastestream in any case.

TABLE 18.—RISK ASSESSMENT RESULTS FOR ISOPHORONE

Plausible mismanagement practice	Hazard quotient (HQ)		
	Central tendency	Bounding	High end
Nonwastewaters:			
• On Site Accumulation	0.01	14	0.6
• Incineration	.....	6.2×10^{-8}	.....

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. EPA investigated damage incidents at which isophorone was an identified contaminant at the site. Based on a review of identified damage instances, no single instance of damage was identified that could be tied to use of isophorone as a solvent. Isophorone was identified as a contaminant at 17 sites in the ROD database, however most of these sites arose from disposal practices that occurred many years ago, prior to promulgation of the RCRA regulations. Of the four facilities identified with isophorone contamination that have operated since 1980, two were landfills, one a chemical waste storage and processing facility, and one a pesticide manufacturing facility. All four of these facilities have also been in operation for many years before 1980, and all sites were contaminated with a myriad of chemicals. The maximum levels of isophorone found at the four sites were 0.014 ppm in groundwater, 59 ppm in soil, and 0.13 ppm in surface water. For the landfills and chemical treatment facility, the use of the isophorone prior to being found at the site is impossible to ascertain. However, in the case of the pesticide manufacturer, isophorone has been used as a starting ingredient in the production of pesticides and insecticides, and isophorone becomes part of the final product. This would not be considered a solvent use.

The solvent uses identified for isophorone are limited to only two industry sectors—agricultural chemicals and coating/printing operations, and none of these sectors were represented by facilities identified as having isophorone contamination onsite. Given that the current use of isophorone appears to be very limited, and considering that all of the isophorone wastes generated in 1993 were treated as hazardous, EPA does not believe that these damage cases are relevant to the listing determination.

c. Conclusion. EPA believes that isophorone does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of isophorone as a solvent should not be listed as hazardous waste under 40 CFR 261.31. As discussed above, risk bounding estimates indicate that isophorone solvent residuals are not considered to pose a substantial risk or potential hazard to human health and the environment through the inhalation pathway from burning. Furthermore, all reported residuals were treated as hazardous waste, and all were sent to thermal treatment. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment.

M. 2-Methoxyethanol Acetate (2-MEA)

1. Industry Identification

In 1992, 2-methoxyethanol acetate (2-MEA) production was estimated to be approximately 500,000 kilograms based on 1988 data; however, the Chemical Manufacturers Association reported that production of this chemical ceased in 1992. It was manufactured only by Union Carbide, under the trade name Methyl Cellosolve Acetate. The use of 2-methoxyethanol acetate is reported to be 82,000 kilograms. The demand for 2-methoxyethanol acetate has declined and current U.S. use is limited to specialty solvents. Based on industry contacts, EPA believes that reported use reflects consumption of stockpiled chemicals.

2. Description of Solvent Usage and Resulting Waste

a. Solvent Use and Questionnaire Responses. In the RCRA 3007 Prequestionnaire of Solvent Use, 16 facilities reported the use of 2-methoxyethanol acetate, with use of greater than 4,000 kilograms in 1992. In the RCRA 3007 Questionnaire, three facilities reported the use of 1,672 kilograms of 2-methoxyethanol acetate in 1993.

Although limited in use, RCRA 3007 Questionnaire respondents indicated that 2-methoxyethanol acetate was used as a diluent in a coating formulation. It also was used as a reaction or synthesis medium and for dissolution.

Literature searches indicate other past uses for 2-methoxyethanol acetate, however, these uses were not confirmed by the RCRA 3007 Questionnaire respondents.

b. Physical/Chemical Properties and Toxicity. 2-Methoxyethanol acetate is completely soluble in water. With a vapor pressure of 1.2 mm Hg at 20°C, 2-methoxyethanol acetate is moderately volatile. The Henry's Law Constant is 7.6×10^{-7} atm-m^3/mole, indicating that 2-methoxyethanol acetate has a low rate of evaporation from water. The Log K_{ow} is -0.76, indicating that 2-methoxyethanol acetate has a low tendency to sorb to soil organic matter or to bioaccumulate.

2-Methoxyethanol acetate is not classified as a carcinogen. EPA estimated a provisional RfC of 0.02 mg/m^3 and RfD of 5.7×10^{-3} mg/kg/day. These correspond to provisional HBLs of 2×10^{-2} mg/m^3 for air, and 0.2 mg/L for water. These health-based numbers are provisional and have not undergone external peer review. The Agency plans to complete an external peer review of these health-based numbers prior to issuing a final determination. EPA requests comments on the appropriateness of the provisional numbers, and seeks any additional data on the toxicity of 2-methoxyethanol acetate.

c. Waste Generation, Characterization, and Management. Three facilities reported the generation of 16,329 kilograms of 2-methoxyethanol acetate solvent residuals. These residuals include 1,362 kg of debris (i.e., rags and containers), almost 15,000 kg of spent solvents, and negligible amounts (<1 kg) of process sludges. For the most part, these residuals had very low (<1 percent) concentrations of 2-methoxyethanol acetate in the residual. Only one residual from one facility had a higher concentration, in a range of 20–50 percent. Given the limited uses reported (diluent in coating and reaction media), wastewaters are not expected and were not reported. Waste management practices reported were hazardous waste incineration and energy recovery in a BIF.

Table 19 presents the waste volumes and loadings of 2-methoxyethanol

acetate for each waste management practice. All waste went to a hazardous waste incinerator or BIF. Given the limited and decreasing use of this chemical as a solvent, EPA believes that these represent the only significant management practices likely to be found. Therefore, to assess possible risks from management of 2-methoxyethanol acetate wastes from solvent use, EPA modeled combustion in a boiler to account for thermal treatment (incineration, BIFs), and storage in an open accumulation tank.

TABLE 19.—WASTE STATISTICS FOR 2–METHOXYETHANOL ACETATE

Management practice	Number of facilities	Number of streams	Total volume (kg)	Total loading (kg)
Incineration	1	3	16,322	963
Boiler/Industrial Furnace	1	3	7	0.07

3. Basis for Proposed No-List Determination

a. Risk Assessment. The Agency estimated risk using bounding assumptions as described earlier (see Section II.C) to obtain a risk for each plausible mismanagement scenario. Where the HQ exceeds 1, exposure may pose a risk to human health and the environment. The results of these analyses are shown inTable 20.

Using risk bounding assumptions, the Agency estimated that management of 2-methoxyethanol acetate residuals in a boiler could result in an inhalation HQ of $7.9x10^{-13}$ and by onsite accumulation could result in an inhalation HQ of 0.4. These results indicate minimal risk through the inhalation pathway for these scenarios.

TABLE 20.—RISK ASSESSMENT RESULTS FOR 2-METHOXYETHANOL ACETATE

Management practice	Hazard quotient (HQ)
	Bounding
Nonwastewaters:	
• On Site Accumulation	0.4
• Incineration	7.3×10^{-13}

All risks are direct inhalation. For a complete description of the risk assessment methodology and results, see the background document Assessment of Risks from the Management of Used Solvents.

b. Environmental Damage Incidents. 2–Methoxyethanol acetate has been detected at one Superfund site. The ROD database indicates that 2-methoxyethanol acetate has contaminated the soil, sediments, and ground water at the site, although no information on the concentration level is available. Wastes deposited at the municipal landfill site include drums of industrial waste that were buried either intact, punctured, or crushed. The ROD database does not specifically cite the uses of any of the wastes found at the site. Given the declining production and solvent use of 2-methoxyethanol acetate, and the fact that the small amount of waste currently generated is treated as hazardous waste, EPA does not believe this damage case provides any relevant information on possible future management of the chemical. Therefore, EPA did not consider this damage case information in the listing determination.

c. Conclusion. EPA believes that 2-methoxyethanol acetate does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). Therefore, EPA is proposing that wastes from the use of 2-methoxyethanol acetate as a solvent should not be listed as hazardous waste under 40 CFR 261.31. The use of 2-methoxyethanol acetate has been declining in recent years and does not appear to be manufactured domestically. Further, as discussed above, risk bounding estimates indicate that 2-methoxyethanol spent solvent residuals are not considered to pose a substantial risk or potential hazard to human health and the environment through the pathways assessed. Residuals from the use of 2-methoxyethanol acetate as a solvent generally are managed as hazardous waste, typically being co-managed with other wastes already listed under 40 CFR Part 261. Thus, these residuals do not appear to be managed in a manner that poses a threat to human health and the environment.

N. Chemicals With No Significant Use as Solvents

The following four chemicals were not reported to have any significant uses as solvents: p-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide. On the 1993 Preliminary Questionnaire, the major recipients were hazardous waste incinerators, fuel blenders, or cement kilns who could not tell if the wastes containing these chemicals had, in fact, solvent use. Except in once case (for p-dichlorobenzene), all other use reported as a solvent at any facility was below 10 kg per year. In these cases, reports of ''solvent use'' often turned out to be quantities purchased for a facility's research laboratory, without regard as to whether the chemical was actually used as a solvent. The Agency contacted facilities that reported apparent solvent use of larger quantities of these chemicals to confirm whether or not solvent use was actually taking place. In all cases, the facility indicated that solvent use was not occurring.

One of the chemicals, p-dichlorobenzene, is a solid at room temperature, which limits its utility as a solvent. The others are relatively reactive chemicals, which also makes them unsuitable for most solvent applications. All the chemicals may appear as an ingredient in product formulations, sometimes as a chemical impurity. The chemicals are most often used as chemical reactants, pesticides, sterilizing agents, or in other non-solvent uses. Information collected by EPA on each of the four chemicals is discussed below.

1. p-Dichlorobenzene

In 1993, U.S. production of p-dichlorobenzene was reported to be 35.9 million kilograms. Data from 1993 indicate that most of the uses that could be identified were nonsolvent uses, including the production of polyphenylene sulfide resin, in room deodorant blocks, and in moth control products. Industry studies indicate that p-dichlorobenzene is used in very limited amounts as a solvent, but is more typically found as a contaminant in o-dichlorobenzene, a listed solvent.

In response to the RCRA § 3007 Prequestionnaire of Solvent Use, the total volume used by 26 Prequestionnaire respondents for 1992 was greater than 25,000 kilograms. Much of that ''use'' was reported by facilities that treat waste by incineration or in a cement kiln; its use was also erroneously reported due to the presence of p-dichlorobenzene as an impurity in o-dichlorobenzene, a listed solvent. Six facilities reported the use of 6,288 kilograms of p-dichlorobenzene as a solvent in response to the RCRA § 3007 Questionnaire of Solvent Use.

The chemical was used in very small volumes (<2kg), except for one facility; this metal finishing facility reported using p-dichlorobenzene in a solvent mixture to remove coatings from metal parts in paint stripping tanks. However the facility reported very little solvent in the resulting wastestreams; furthermore, this facility indicated in its questionnaire response that it intended to cease using p-dichlorobenzene and switch to a less toxic solvent. In general, the data from most industries indicate that the chemical is primarily used in research and laboratory applications. p-Dichlorobenzene has a melting point of 54°C and is a solid at room temperature, limiting possible solvent uses.

Wastes from p-dichlorobenzene use were generated as spent lab solvents, laboratory wastewaters, spent solvents, and as part of process wastewaters. Five facilities reported that p-dichlorobenzene solvent waste was sent to hazardous waste incineration or a BIF; this includes the facility that used most of the p-dichlorobenzene. One facility reported discharging process wastewaters to a sanitary sewer (POTW). The total amount of p-dichlorobenzene reported in the wastestreams generated from solvent use in 1993 was <17 kg.

No instance of environmental damage relating to the use of p-dichlorobenzene as a solvent has been identified. This chemical is relatively common at CERCLA and other environmental damage sites, but always appears with other contaminants, most often solvents classified as F001–F005 wastes. p-Dichlorobenzene commonly occurs with high concentrations of o-dichlorobenzene, probably due to the presence of the p-isomer as an impurity. Other damage sites at which p-dichlorobenzene has been detected include former dye manufacturers; however, a nonsolvent use for p-dichlorobenzene is as an intermediate in a dye manufacturing process. Given the extremely low solvent use identified for p-dichlorobenzene, it is not likely that any of the damage incidents identified were the result of mismanagement of p-dichlorobenzene used as a solvent.

The Agency proposes that wastes from the use of p-dichlorobenzene as a solvent should not be listed as hazardous waste under 40 CFR 261.31. The use of p-dichlorobenzene as a solvent appears to be extremely limited, having specialty applications in laboratories and little or no industrial solvent use. p-Dichlorobenzene may be present in wastes generated from use of o-dichlorobenzene as a solvent, because the para-isomer is an impurity in the o-dichlorobenzene. However, o-dichlorobenzene is already included in the F002 solvent listing, therefore, these wastes would already be regulated as hazardous. Residuals from the use of p-dichlorobenzene as a solvent generally are very small volumes and the total amount of p-dichlorobenzene in residuals was only 17 kg in 1993. Given that wastes generated were either incinerated or sent to a POTW where it would be further diluted by large volumes of other wastewater and treated, EPA believes that these wastes present no significant risks to human health and the environment.

2. Benzyl Chloride

Data from 1993 indicate that U.S. demand for benzyl chloride was 33.2 million kilograms. Nonsolvent applications account for nearly 100 percent of the reported uses of benzyl chloride. There were no industrial solvent uses of benzyl chloride identified during the industry study. Monsanto Corporation informed EPA in February 1993 that it is the only U.S. producer of benzyl chloride and that benzyl chloride has no current solvent uses.

Data from the RCRA 3007 Prequestionnaire reported the total volume used by the 12 Prequestionnaire respondents was 21,809 kg in 1992. Nearly all of that ''use'' was reported by TSD facilities that accepted the constituent for thermal treatment. Five facilities reported the 1993 use of 6.4 kg of benzyl chloride in response to the RCRA 3007 Questionnaire of Solvent Use; the 1992 solvent use was reported to be 5.9 kg. Data for 1993 indicated that the total amount of benzyl chloride solvent waste generated by five facilities in 1993 was 36,817 kg, and that these waste contained a total loading of 1.9 kg of benzyl chloride.

Benzyl chloride hydrolyzes in water and decomposes rapidly in the presence of most common metals (e.g., iron). The aqueous hydrolysis rate for benzyl chloride corresponds to a half-life of 14 hours; this means that the concentration of benzyl chloride in water would decrease by a factor of 1000 in less than 6 days. Due to its rapid transformation in environmental media, benzyl chloride is not expected to be persistent in moist soil or water. Given its high reactivity, it is highly unlikely that this chemical could find significant use as a solvent. Of the facilities providing information in the RCRA 3007 Questionnaire, each facility used 1 kg or less of benzyl chloride. The benzyl chloride solvent waste generated in 1993 were classified as spent solvents, and all were reported incinerated as hazardous. Given the extremely low use rates, the concentration of benzyl chloride in the waste solvents is negligible (<2kg).

Benzyl chloride has been identified as a constituent of concern at one site investigated using CERCLA. However, there are no sites that have undergone a ROD that identifies benzyl chloride as a constituent. The reason for the absence of benzyl chloride may be due to its breakdown in the environment prior to the ROD investigation. In no instances has the use of benzyl chloride as a solvent been linked to environmental damage in either the ROD or HRS databases.

The Agency proposes that waste from the use of benzyl chloride as a solvent not be listed as hazardous waste under 40 CFR 261.31. The use of benzyl chloride as a solvent appears to be very limited, having specialty applications in laboratories and no known industrial solvent use. Residuals from the apparent use of benzyl chloride as a solvent generally are very small volumes and contain negligible concentrations of the solvent. The reactivity of the chemical severely limits any solvent use. The relatively rapid hydrolysis of benzyl chloride also indicates that the substance will not persist long enough to present significant risk even if released to the environment in such small quantities. Furthermore, all residuals are managed as hazardous waste. Thus, EPA believes that there are no residuals from solvent use that pose a threat to human health and the environment.

3. Epichlorohydrin

The estimated U.S. production and import of epichlorohydrin were 229.6 million kilograms, based on 1989 production data and 1993 import data. Nonsolvent use of epichlorohydrin includes use in the production of epoxy resins, glycerin, epichlorohydrin elastomers.

In response to the prequestionnaire, 14 facilities indicated that epichlorohydrin was used as a solvent at their site. These facilities reported a total use of more than 76,365 kilograms in 1992. Nearly all of these ''uses'' were either misreported as solvent use (when epichlorohydrin was, in fact, a chemical reactant) or the use was reported by a facility that accepted the constituent for thermal treatment or reclamation. Three facilities reported use 3.4 kilograms of epichlorohydrin as a solvent in response to the RCRA section 3007 Questionnaire of Solvent Use. The sharp decline reflects the elimination of a treatment facility from further study, since the use of the epichlorohydrin as a solvent prior to treatment could not be confirmed.

Literature searches indicate that epichlorohydrin has been used as an ingredient in natural and synthetic resins, gums, cellulose esters and ethers, paints, varnishes, nail enamels, lacquers, and cement for celluloid. Finally, epichlorohydrin has been used by the textiles industry to modify the carboxyl groups of wool, in the preparation of fibers, and in dyeing fibers.

Three facilities provided data in the section 3007 Questionnaire of Solvent Use. One facility used only .001 kg in 1993; the wastes generated (25 kg) were classified as lab wastes and sent off-site to a hazardous waste incinerator or to a nonhazardous energy recovery facility. The other two facilities, both pharmaceutical companies, used 1 kg and 2.36 kg of epichlorohydrin, respectively, in 1993. One of the two pharmaceutical facilities reported the generation of a total of 17,254 kg of spent solvent or lab waste, which was sent off-site for hazardous waste incineration. The other facility generated 5,000 kg of spent solvent or lab waste, which was incinerated on-site in a hazardous waste incinerator. These wastes contained epichlorohydrin in part per million concentrations.

Epichlorohydrin has not been identified as a constituent of concern at any sites investigated using the HRS. In addition, there are no sites that have undergone a ROD that identify epichlorohydrin as a constituent. The reason for the absence of epichlorohydrin may be due to its breakdown in the environment prior to the ROD or HRS investigation. Epichlorohydrin hydrolyzes relatively rapidly in water with a half-life of 8.2 days. In no instances has the use of epichlorohydrin as a solvent been linked to environmental damage in either the ROD or HRS databases.

The Agency proposes that waste from the use of epichlorohydrin as a solvent not be listed as hazardous waste under 40 CFR 261.31. The use of epichlorohydrin as a solvent, if it truly occurs, appears to be limited to specialty applications in laboratories and no known industrial solvent use. Residuals from the apparent use of epichlorohydrin as a solvent generally are very small volumes and contain negligible concentrations of the solvent. The reactivity of the chemical severely limits any solvent use. The relatively rapid hydrolysis of epichlorohydrin also indicates that the substance is unlikely to persist long enough to present significant risk even if released to the environment in such small quantities. Furthermore, all of the waste was reported to be incinerated as hazardous waste. Thus, EPA believes that there are no residuals from solvent use that pose a threat to human health and the environment.

4. Ethylene Dibromide

The estimated U.S. capacity for ethylene dibromide production and import totals 61.6 million kilograms for 1993, based on 1981 production capacity and 1993 import data. However, production has been declining since 1974, and 1993 production was 11.3 million kg. The industry study confirms that ethylene dibromide has no significant use as a solvent. Nonsolvent uses included use as a lead scavenger in gasoline, as an insect and soil fumigant, and as an intermediate in the synthesis of dyes, pharmaceuticals, and vinyl bromide.

According to industry data obtained in the RCRA 3007 Preliminary Questionnaire, 11 facilities used a total of 127,760 kilograms of ethylene dibromide in 1992. Only two facilities used more than 1,000 kg per year. In response to the full RCRA 3007 Questionnaire, three facilities reported use of 14 kg of ethylene dibromide as a solvent in 1993. The apparent sharp decline reflects the elimination of a TSD from further study, since the use of ethylene dibromide as a solvent prior to treatment could not be confirmed by questionnaire responses. EPA did not find any evidence of significant solvent uses in industrial, rather than research settings. EPA believes that the facilities that reported using it as a solvent in the 3007 Survey probably used the chemical in an undefined manner in a laboratory, which may or may not include minor use as a solvent.

Of the three facilities providing data in the RCRA 3007 Questionnaire, a total of 34,197 kg of waste was generated, from a total use of 14 kg. All this waste was classified as spent laboratory waste. According to the Questionnaire data, all the wastes generated were sent to a hazardous waste incineration facility, either on-site or off-site. While no exact non-CBI waste concentrations were reported, given that only 14 kg of ethylene dibromide was reported used, the Agency believes that the wastes sent to incineration have very low (part per million range or lower) concentrations of ethylene dibromide.

Ethylene dibromide (EDB) has been detected at two sites undergoing a ROD evaluation. The ROD database indicates that EDB has contaminated soil, soil gas, and ground water at the two sites. Records indicate that the source of the contamination for the two sites can be linked to the use of EDB as a grain fumigant/pesticide. At a pesticide manufacturing facility EDB has been detected in the soil in an area where pesticide production wastes had been dumped. EDB has also been detected at a site that includes a grain storage facility where EDB was used to fumigate grain. None of the information on these sites indicates that ethylene dibromide was used as a solvent in these situations. In water ethylene dibromide hydrolyses relatively rapidly; the half-life of this reaction is 5–10 days.

The Agency proposes that waste from the use of ethylene dibromide as a solvent not be listed as hazardous waste under 40 CFR 261.31. The use of ethylene dibromide as a solvent, if it occurs, appears to be very limited, having specialty applications in laboratories and no known industrial solvent use. Residuals from the apparent use of ethylene dibromide as a solvent contain negligible concentrations of the solvent. Furthermore, all wastes were reported to be incinerated as hazardous waste. The reactivity of the chemical severely limits any solvent use. Thus, EPA believes that there are no residuals from solvent use that pose a threat to human health and the environment.

O. Relationship to RCRA Regulations and Other Regulatory Programs

There are several recent regulations and ongoing rulemaking efforts that may affect the usage, generation, and management of certain solvents being examined under the current judicially mandated listing determinations. Each of these rules is briefly described below.

Resource Conservation and Recovery Act Regulations

The Agency recently has published universal treatment standards for several of the chemicals addressed in today's proposal (59 FR 47980, September 19, 1994). These standards establish consistent concentration limits for constituents that previously may have been subject to inconsistent standards under various land disposal rulemakings. Under the final rule, universal standards are established for four of the 14 currently targeted solvents when found in nonwastewaters, and for four of the 14 solvents in wastewaters. Figure 2 presents the universal treatment standards proposed for solvents subject to the current listing determination.

FIGURE 2.—PROPOSED UNIVERSAL TREATMENT STANDARDS FOR TARGET SOLVENTS

Solvent	Proposed non-wastewater standard *	Proposed wastewater standard **
Acetonitrile	.....	0.17 mg/l *
p-dichlorobenzene (1,4-dichlorobenzene)	6.0 mg/kg	0.09 mg/l *
Ethylene Dibromide (1,2–Dibromoethane)	15.0 mg/kg	0.028 mg/l *
Methyl Chloride (Chloromethane)	30.0 mg/kg	0.19 mg/l *
Pheno	l6.2 mg/kg	0.039 mg/l *

* Based on grab samples.
** ased on composite samples.

Under 40 CFR 268.7(a), a waste generator must test the waste or an extract thereof (or apply knowledge of the waste) to determine whether the waste is hazardous and restricted from land disposal under the LDR program. If the waste is restricted from land disposal and does not meet the applicable treatment standards set forth in Part 268, the generator must notify any facility receiving the waste of the appropriate treatment standards. If a generator determines that a restricted waste meets all applicable treatment standards, he/she must submit a notice to facilities receiving the waste certifying that the waste meets applicable treatment standards.

Finally, regardless of the impact of the regulations discussed above, it is anticipated that a significant portion of the regulated community will opt for recycling as a management technique for any solvents that may be listed as a result of this investigation. Recycling exemptions in the hazardous waste regulations provide significant incentives for recycling wastes rather than managing them through traditional means (See 40 CFR 261.2, 261.4, 261.6, and Part 266).

Occupational Safety and Health Administration Regulations

One notable regulatory initiative is the Occupational Safety and Health Administration (OSHA) examination of the health impacts of glycol ethers. OSHA has recently proposed amendments to its existing regulation for occupational exposure to certain glycol ethers, specifically 2-methoxyethanol, 2-ethoxyethanol, and their acetates (2-methoxyethanol acetate, 2-ethoxyethanol acetate) (58 *FR* 15526; March 23, 1993). This proposed rule will reduce the existing 8-hour time-weighted average (TWA) permissible exposure limit, as well as establish guidelines to achieve generally lower exposure for employees to these chemicals. This proposal appears to have affected facility usage of these glycol ethers. In response to the Agency's RCRA § 3007 inquiries, a number of facilities reported that use of these glycol ethers had been discontinued at their site due to health concerns. Others reported that the use of these glycol ethers will be phased out in the near future.

Clean Air Act Regulations

The Clean Air Act (CAA) Amendments of 1990 require EPA to expand the regulation of air toxics to 189 substances over a 10-year period (such substances are presumed to warrant regulation as air toxics—the list may be modified by the Administrator). This statutory list of air toxics includes all but two of the 14 solvents addressed in today's proposal. The two that are not listed as presumed air toxics are cyclohexanol and furfural. The CAA amendments do not require that the air toxics be regulated on a constituent-specific basis. Rather, EPA is required to identify categories of industrial facilities that emit substantial quantities of one or more air toxics. A list of the source categories, as well as a schedule for promulgation of hazardous air pollutant regulations, is published at 58 FR 63952 (December 3, 1993). The Agency has identified 174 source categories (including 8 area sources). The source categories include: pharmaceutical production processes; agricultural chemicals production; polymer and resins production; production of inorganic chemicals; production of organic chemicals; and numerous miscellaneous processes, including semiconductor manufacturing. Categories of area sources include, for example, halogenated solvent cleaners. Such increased regulation of many of the industries that use the 14 target solvents may prompt increased recapture and reuse of the constituent, or encourage the use of alternative compounds.

Emergency Planning and Community Right-to-Know Act Regulations (EPCRA)

Section 313 of EPCRA requires that any facility with 10 or more employees in SIC codes 20–39 that manufactures, processes, or otherwise uses specified chemicals in amounts exceeding established thresholds must report, to EPA and designated state agencies, any releases of these chemicals to the environment. The reported data comprise the Toxics Release Inventory (TRI). The chemicals in the TRI are listed at 40 CFR 372.65, and include all but three (cyclohexanol, isophorone, and furfural) of the 14 solvents addressed in today's proposal. Under EPCRA, the quantity threshold for chemical use is 10,000 pounds per calendar year. The reporting quantity threshold for manufacturing, importing or processing is 25,000 pounds per year (1989 and- thereafter). Although TRI release reporting does not have a direct impact on hazardous waste generation or management capacity, it is generally accepted that these reporting requirements create strong incentives for facilities to reduce releases and alter operating practices to reduce or eliminate the use of specified chemicals. Annual TRI reporting was initiated in 1988 (addressing releases during 1987) and is undergoing expansion. For example, a final rule published on November 30, 1994 (59 FR 61432) added 286 chemicals and chemical categories to the TRI reporting inventory. Among the chemicals added are cyclohexanol and isophorone.

Clean Water Act Regulations

The Agency currently is revising the effluent guidelines and standards for the pharmaceutical manufacturing category. This work, which is being conducted under a Consent Decree (*NRDC* v. *Browner*, (D.D.C. 89–2980; January 31, 1992)), involves the review and revision of the existing effluent guidelines and will consider inclusion of limitations on toxic and non-conventional volatile organic pollutants. A notice of proposed rulemaking was published on May 2, 1995. The Agency has also revised the effluent guidelines and standards applicable to the organic chemicals, plastics, and synthetic fibers industry (OCPSF) (58 FR 36872; July 9, 1993). These revisions add BAT and NSPS

standards for 19 additional constituents (including p-dichlorobenzene, methyl chloride, and phenol) and pretreatment standards for 11 of these 19 pollutants (including p-dichlorobenzene and methyl chloride).

The Agency also has developed effluent guidelines and standards for the pesticide chemicals category. This work (also being conducted under the NRDC Consent Decree) limits the discharge of pollutants into U.S. waters and POTWs from new and existing facilities that manufacture pesticide active ingredients. A final rule was published on September 28, 1993 (58 FR 50638), which included standards for p-dichlorobenzene and phenol, two constituents addressed by the solvents listing investigation. EPA is also completing effluent standards for facilities that formulate, package, and/or repackage pesticide active ingredients into final products. EPA expects to complete this rule by September 30, 1996.

As noted in the discussion of other rules above, these new and revised effluent standards may result in the generation of wastes already regulated under the CWA and/or may encourage the recycling or reduction of CWA-regulated constituents. It is noteworthy that, although not imposed as part of these rulemakings, the Agency routinely evaluates zero discharge effluent standards (usually based on recycling) as an option for new sources.

III. Waste Minimization

In the Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, P.L. 101–508, November 5, 1990), Congress declared pollution prevention to be a national policy of the United States. The act declares that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled or reused; pollution that cannot be prevented/reduced or recycled should be treated in an environmentally safe manner wherever feasible; and disposal or release into the environment should be chosen only as a last resort, and should be done in an environmentally safe manner. This section provides a general discussion of some generic pollution prevention and waste minimization techniques that facilities may wish to explore.

Waste minimization practices fall into three general groups: change in production practices, housekeeping practices, and practices that employ the use of equipment that by design promote waste minimization. Some of these practices/equipment listed below conserve water, others reduce the amount of product in the wastestream, while others may prevent the creation of the waste altogether. EPA acknowledges that some of these practices/equipment may lead to media transfers or increased energy use. This information is presented for general information, and is not being proposed as a regulatory requirement. Production practices include:

- Triple-rinsing raw material shipping containers and returning the rinsate directly to the reactor;
- Scheduling production to minimize changeover cleanouts;
- Segregating equipment by individual product or product ''families;''
- Packaging products directly out of reactors;
- Steam stripping wastewaters to recovery reactants or solvents for reuse;
- Using raw material drums for packaging final products; and
- Dedicating equipment for hard to clean products.

Housekeeping practices include:

- Performing preventive maintenance on all valves, fittings, and pumps;
- Promptly correcting any leaky valves and fittings;
- Placing drip pans under valves and fitting to contain leaks; and
- Cleaning up spills or leaks in bulk containment areas to prevent contamination of storm or wash wasters.

Equipment promoting waste minimization by reducing or eliminating waste generation include:

- Low-volume/high-pressure hoses for cleaning;
- Drum triple-rinsing stations;
- Reactor scrubber systems designed to return captured reactants to the next batch rather than to disposal;
- Material storage tanks with inert liners to prevent contamination of water blankets with contaminants which would prohibit its use in the process; and
- Enclosed automated product handling equipment to eliminate manual product packaging.

Waste minimization measures can be tailored to the needs of individual industries, processes, and firms. This approach may make it possible to achieve greater pollution reduction with less cost and disruption to the firm.

Defined process control and good housekeeping practices often can result in significant waste volume or toxicity reduction. Evaluations of existing processes also may point out the need for more complex engineering approaches (*e.g.*, waste reuse, secondary processing of distillation bottoms, and use of vacuum pumps instead of steam jets) to achieve waste minimization objectives. Simple physical audits of current waste generation and in-plant management practices for the wastes also can yield positive results. These audits often turn up simple nonengineering practices that can be implemented successfully.

VI. State Authority

A. Applicability of Rule in Authorized States

Because this proposal would not change the Federal program, it would not affect authorized State programs. However, the relevant State authorization provisions are as follows.

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings proposed in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Because any regulations that EPA might propose (with the exception of the actions proposed under CERCLA authority) would be promulgated

pursuant to the HSWA, a State submitting a program modification is able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that states with final authorization modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt a final rule will be determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). If any HSWA regulations are adopted in the final rule, Table 1 at 40 CFR 271.1 would be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those EPA may issue. These State regulations have not been assessed against the Federal regulations being proposed to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement any such regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i).

V. CERCLA Designation and Reportable Quantities

All RCRA hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the hazardous waste characteristics, are also hazardous substances under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. Hazardous substances are listed in Table 302.4 at 40 CFR 302.4, along with their respective reportable quantities (RQs). Because EPA is not proposing to list any wastes, the Agency is not proposing changes to Table 302.4.

Under CERCLA 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release as soon as that person has knowledge of the release. In addition to this reporting requirement under CERCLA, Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA) requires owners or operators of certain facilities to report the release of a hazardous substance to State and local authorities. EPCRA Section 304 notification must be given to the community emergency coordinator of the local emergency planning committee (LEPC) for each area likely to be affected by the release, and to the State emergency response commission (SERC) of any State likely to be affected by the release.

Under Section 102(b) of CERCLA, all hazardous wastes are assigned a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined, called ''primary criteria,'' are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ, as determined by the primary RQ adjustment criteria, is generally raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous form after its release, the original substance is assigned an RQ equal to the RQ for the reaction product. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased if it degrades to a more hazardous form.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA waste streams that contain individual hazardous substances as constituents. In the August 14, 1989 Federal Register (54 FR 33440), the Agency stated that, in assigning an RQ to a waste stream, the Agency determines the RQ for each waste stream constituent and then assigns the lowest of these constituent RQs to the waste stream itself.

VI. Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a new regulation is a ''significant regulatory action'' and, therefore, subject to the requirements of the Executive Order and to review by the Office of Management and Budget. The E.O. defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

The Agency has analyzed the costs associated with this proposal, which are discussed in the following section, and has determined that this proposed rule is not a significant regulatory action. Because the Agency is not proposing to change any regulatory requirements for these chemicals, there are no costs to industry associated with this proposal, nor any economic impacts.

VII. Environmental Justice

Executive Order 12898 (59 FR 7629; February 16, 1994) requires Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of their programs, policies, rulemakings, and other activities, on minority populations and low-income populations. The Order directs each Federal agency to develop an agency-wide environmental justice strategy that will list agency programs, policies, public participation processes, enforcement activities, and rulemakings related to human health and environment that should be revised to, at a minimum: (1) promote enforcement of all human health and environmental statutes in areas with minority and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health and environment of minority and low-income populations; and (4) identify differential patterns of natural resource consumption among minority and low-income populations.

Specifically, E.O. 12898 directs Federal agencies, in connection with the development and implementation of Agency strategies on environmental justice, to collect, maintain, and analyze information on the race, national origin, income level, and other appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic impact on the surrounding populations, when such facilities or sites are the subject of a substantial Federal environmental administrative or judicial action.

Today's proposal not to list any of the target solvents as hazardous waste is expected to have no impact on any minority or low-income populations. EPA has evaluated risks to hypothetical receptors that might live close to facilities using these chemicals as solvents, and in all cases the Agency found no significant risks are likely to any nearby population. Therefore, EPA does not believe that any further analysis is required under Executive Order 12898.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the rule is estimated not to have a significant economic impact on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small entities is likely to experience financial distress based on the costs of the rule, then the Agency considers that the rule will have a significant impact on a substantial number of small entities, and must perform an RFA. Because today's proposal would not change any regulatory requirements, the Agency estimates that this action will not significantly impact 20 percent of the population of small entities. Therefore, the Agency has not conducted an RFA for today's proposed rule.

IX. Paperwork Reduction Act

Today's proposed rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Because there are no new information collection requirements proposed in today's rule, an Information Collection Request has not been prepared.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

XI. Compliance and Implementation

Because no regulatory action is being proposed today, the Agency expects no change in regulatory status for authorized and nonauthorized states.

List of Subjects

40 CFR Part 261

Environmental Protection, Hazardous Materials, Waste treatment and disposal, Recycling.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental Protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and record keeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: August 2, 1996.
Carol M. Browner,
Administrator.
[FR Doc. 96–20592 Filed 8–13–96; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday
August 14, 1996

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing: NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grants; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4021–N–01]

Office of the Assistant Secretary for Public and Indian Housing; NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability.

SUMMARY: This NOFA announces a total of § 30.8 million in grant funds. A total of $53,000,000 was set-aside from the Community Development Block Grant (CDBG) appropriation for an economic development and supportive services program. This NOFA announces grants to public housing agencies and Indian housing authorities (collectively HAs) that are in partnership with non-profit or incorporated for-profit agencies to (1) provide economic development opportunities and supportive services to assist residents of public and Indian housing to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs, and (2) to provide supportive services to assist the elderly and persons with disabilities to live independently or to prevent premature or unnecessary institutionalization. The grants will be up to three years in duration.

Additionally, of the $53 million, $8 million is set-aside for the Bridges to Work Demonstration Program, $9.2 million is set-aside for the Section 8 Family Self-Sufficiency (FSS) Program, and $5 million is set-aside for Housing's Neighborhood Network and Resident Initiatives programs. These set-asides will be announced by separate notice. The set-aside for the FSS Program was already announced by notice of funding availability published in the Federal Register on July 26, 1996 (61 FR 39262).

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, and application processing, including how to apply and how selections will be made.

DATES: Application kits will be available September 3, 1996. The application deadline will be 3:00 p.m., local time, on October 15, 1996.

ADDRESSES: An application kit may be obtained from the local HUD Office of Public Housing/Office of Native American Programs with delegated responsibilities over an applicant Public Housing Agency/Indian Housing Authority (See Appendix for listing), or by calling the HUD Resident Initiatives Clearinghouse toll free number 1–800–955–2232. Telephone requests must include your name, mailing address, or post office address (including zip code), and should refer to document FR–4021–N–01. This NOFA cannot be used as the application.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Community Relations and Involvement (OCRI), or Tracy Outlaw, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone numbers (OCRI) (202) 708–4214; and ONAP (202) 755–0088. Hearing-or-speech-impaired persons may contact the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 for information on the program. (With the exception of the ''800'' number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by a separate notice in the Federal Register.

I. Purpose and Substantive Description

A. Authority

Omnibus Consolidated Rescissions and Appropriation Act of 1996 (Pub. L. 104–134, approved April 26, 1996).

B. Allocation Amounts

The maximum grant amount that a Housing Authority (HA) may receive under this grant program is $1,000,000. A HA may submit one application under the Economic Development and Supportive Services grant category and/or one application under the Supportive Services grant category to assist the Elderly and/or Persons with Disabilities. The maximum number of applications that an HA may submit is two.

C. Overview and Policy

The purpose of this funding is to assist residents of public and Indian housing, the elderly, and persons with disabilities to become self-sufficient and to live independently or to prevent premature or unnecessary institutionalization. Funding in this NOFA is limited to certain statutorily eligible persons and future NOFAs will address the other available uses of the remaining funding.

The EDSS grant program is administered by the Department's Office of Community Relations and Involvement in the Office of Public and Indian Housing, with assistance from a network of Community Relations and Involvement Specialists (CRIS) in HUD's Field Offices.

D. Definitions

(1) *Supportive Services* means new or significantly expanded services essential to providing eligible residents assistance to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs. Supportive services may include:

(a) Childcare, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(b) Employment training and counseling (e.g., job training (such as Step-Up programs), preparation and counseling, job search assistance, job development and placement, and continued follow-up assistance after job placement);

(c) Computer skills training;

(d) Homeownership training and counseling;

(e) Education (e.g., remedial education, literacy training, assistance in the attainment of certificates of high school equivalency, two-year college assistance, four-year college assistance, trade school assistance, youth leadership skills and related activities (activities may include peer leadership roles training for youth counselors, peer pressure reversal, life skills, goal planning);

(f) Youth mentoring of a type that mobilizes a potential pool of role models to serve as mentors to public housing youth. Mentor activities may include after-school tutoring, drug abuse treatment, job counseling or mental health counseling.

(g) Transportation costs, as necessary to enable any participating family member to receive available services to commute to his or her training or

supportive services activities or place of employment;

(h) Personal welfare (e.g., family/parental development counseling, parenting skills training for adult and teenage parents, substance/alcohol abuse treatment and counseling, and self-development counseling, etc.);

(i) Supportive Health Care Services (e.g., outreach and referral services); and

(j) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

(2) *Supportive Services for the elderly and for persons with disabilities* means new or significantly expanded services determined to be minimally necessary and essential to enable eligible residents to live independently and to prevent premature or unnecessary institutionalization, that include:

(a) Meal service adequate to meet nutritional need;

(b) Personal assistance (which may include, but is not limited to, aid given to eligible residents in grooming, dressing, and other activities which maintain personal appearance and hygiene);

(c) Housekeeping aid;

(d) Transportation services;

(e) Non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with State law;

(f) Non-medical components of adult day care;

(g) Personal emergency response systems and other requested supportive services essential for achieving and maintaining independent living; and

(h) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

(3) *Activity of Daily Living* (ADL) means an activity regularly necessary for personal care and includes eating (may need assistance with cooking, preparing or serving food, but must be able to feed self); dressing (must be able to dress self, but may need occasional assistance); bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self; grooming (may need assistance in washing hair, but must be able to take care of personal appearance); getting in and out of bed and chairs, walking, going outdoors, using the toilet; and household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices). Each of the Activities of Daily Living noted above includes a requirement that a person must be deficient in his or her ability to perform at a specified minimal level (e.g., to satisfy the eating ADL, must be able to feed him/herself). The determination of whether a person is deficient in this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding him/herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. The Activities of Daily Living are relevant only with regard to determination of a person's eligibility to receive services under the EDSS program. (See 24 CFR part 700, Congregate Housing Services Program)

(4) *Economic Development activities* means new or expanded activities essential to facilitate economic uplift and provide access to the skills and resources needed for self-development and business development. Economic development activities may include:

(a) Entrepreneurship Training (literacy training, computer skills training, business development planning).

(b) Entrepreneurship Development (entrepreneurship training curriculum, entrepreneurship courses)

(c) Micro/Loan Fund. A strategy for establishing a revolving micro loan fund. A loan fund must be included as part of a comprehensive entrepreneurship training program.

(d) Developing credit unions. A strategy to establish onsite credit union(s) to provide financial and economic development initiatives to HA residents. The credit union shall support the normal financial management needs of the community (i.e., check cashing, savings, consumer loans, micro-businesses and other revolving loans).

(5) *Eligible residents* means residents of a participating HA, including the elderly and persons with disabilities.

(6) *Secretary* means the Secretary of Housing and Urban Development.

(7) *Service Coordinators* means, for purposes of this NOFA, any person who is responsible for:

(a) Assessing the training and supportive service needs of eligible residents;

(b) Working with service providers to coordinate the provision of services and to tailor the services to the needs and characteristics of eligible residents;

(c) Monitoring and evaluating the delivery, impact, effectiveness and outcomes of supportive services under this program;

(d) Coordinating this program with other self-sufficiency, education and employment programs;

(e) Performing other duties and functions that are appropriate to assist eligible public housing residents to become self-sufficient;

(f) Performing other duties and functions to assist the elderly and persons with disabilities remain independent, and to prevent premature or unnecessary institutionalization.

(g) Mobilizing other national and local public/private resources and partnerships.

(8) *Congregate services* means supportive services that are provided in a congregate setting at a conventional HA development for the elderly and for persons with disabilities.

(9) *Elderly person* means a person who is at least 62 years of age.

(10) *Person with disabilities* means a household composed of one or more persons, at least one of whom is an adult who has a disability. A person who:

(a) Has a disability as defined in section 223 of the Social Security Act,

(b) Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which (I) is expected to be of long-continued and indefinite duration, (II) substantially impedes his or her ability to live independently, and (III) is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act. Such a term shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

(11) *Stipend* means monetary assistance provided to eligible residents to minimally cover resident costs while participating in the supportive services/economic development activities. Pursuant to 24 CFR 913.106 and 950.102 (for IHAs), stipends are excluded from income for rent purposes. The stipend amount shall be determined by each HA. Stipends shall not be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(12) *Commitment* means documented evidence in the form of a written obligation (on appropriate letterhead) specifying:

(a) The dollar amount and source of funds or types of resources promised for the program, and their use in the program;

(b) The date of availability and duration of funds or other types of resources;

(c) The authority by which the commitment is made (such as board resolution, grant award notification);

(d) The signature of the appropriate executive officer authorized to commit the resources.

E. Eligibility

(1) *Eligible Applicants.* Funding for this program is limited to public and Indian housing authorities that evidence a partnership with non-profit or incorporated for-profit agencies for the purposes of providing economic development and/or supportive services activities that assist eligible participants under this program to become self-sufficient, to live independently, and to avoid premature or unnecessary institutionalization. The Department is in full support of economic uplift and the creation of opportunities that give public and Indian housing residents, the elderly and persons with disabilities access to the skills and resources that move them toward self-sufficiency, economic independence, and independent living and that are made available through partnerships and comprehensive strategies among HAs, resident groups, and local public and private organizations.

Evidence of a partnership shall be in the form of a Memorandum of Agreement/Understanding (MOA/MOU) which outlines each partner's responsibilities and commitment to provide funding or services to the partnership and to the residents served under this program. Non-profit agency partners may include Resident Management Corporations (RMCs)/ Resident Councils (RCs)/Resident Organizations (ROs) as well as City-wide and Jurisdiction-wide Organizations (City-wide and Jurisdiction-wide Organizations shall consist of members of RMCs/RCs/ROs who reside in housing developments that are owned and operated by an HA within the HA's jurisdiction), Indian Housing Authorities Resident Organizations (ROs), Area Agencies on Aging, Local Offices on Aging, Agencies serving persons with disabilities, Independent Consultants, Technical Assistance Providers, Community Development Corporations (CDCs), Community Action Agencies, Neighborhood Housing Services, Universities, other State/Regional Associations, Labor Unions and Churches. For-profit organizations may include banking institutions. Activities under this NOFA may be provided by the HA and the partner agency directly or may be subcontracted to other local agencies/organizations.

Eligible participants include residents of public and Indian housing, including the elderly and persons with disabilities.

To be eligible for supportive services under this NOFA, elderly individuals must be deficient in one or more Activities of Daily Living (ADL).

(2) *Eligible Activities.* Program funds may be used for the following activities:

(a) The provision of economic development activities and supportive services that are appropriate to assist eligible residents to become economically self-sufficient, to continue to live independently, to avoid premature or unnecessary institutionalization; but only if the HA demonstrates:

(i) Firm commitments of funding or services from other sources;

(ii) That the proposed activity is part of a comprehensive strategy that promotes self-sufficiency and independent living, and prevents premature or unnecessary institutionalization.

(b) The employment of service coordinators.

(3) *Eligible Costs.* Activities that may be funded and carried out by an HA include, but are not limited to the following:

(a) Supportive services. Costs that include appropriate services (see Section I.D(1)–(2) of this NOFA); Technical Assistance (T/A) Contractor fees;

(b) Economic development activities. Costs that include appropriate training program activities (see Section I.D(3) of this NOFA); Micro-loan fund; Technical Assistance (T/A) Contractor fees; Developmental costs for establishing credit unions (to include consulting and training costs by other financial institutions, banks, credit unions).

(c) Administrative costs. No more than 15 percent (15%) of the total grant may be used for administrative costs. Costs that include liability insurance costs directly related to training, utility costs (telephone, fax, light, gas), Postage, Printing, Copier, Accounting, initial equipment purchase (i.e., desks, chairs, computer equipment, tools, etc.).

(d) Service Coordinator(s)/Case Manager(s) Salary.

(e) Home counseling assistance.

(f) Other program costs. Costs that include advertisement, training stipends, travel stipends (for program participant travel costs); vehicle lease (to transport participants to appropriate services/training). The purchase of a vehicle under this program is prohibited.

Each applicant must submit a narrative budget, timetable, and list of milestones outlining the economic development activities and supportive services proposed for the three-year period. Milestones shall include the targeted population to be served, including the number of participants to be served, types of services, dollar amounts and the outcomes to be achieved over the three-year period.

(4) *Ineligible Costs.*

(a) Payment of wages and/or salaries to participants of supportive services and/or training programs, except that grant funds may be used to hire a resident(s) to coordinate/provide services (i.e, service coordinators, counselors, etc.) and or to coordinate/ provide training program activities;

(b) Purchase or rental of land or buildings or any improvements to land or buildings;

(c) Building materials and construction costs; and

(d) The purchase of any vehicle(s) (car, van, bus, etc.).

F. Other Program Requirements

(1) *Resident Involvement.* The Department has a longstanding policy of encouraging HAs to promote resident involvement, and to facilitate cooperative partnerships with residents to achieve specific and mutual goals. Therefore, residents must be included in the planning and implementation of this program. The HA shall develop a process that assures that the duly elected RC/RMC/RO representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application in response to this NOFA. The HA shall give full consideration to the comments and concerns of the residents. The process shall include:

(a) Informing the targeted residents regarding the preparation of the application, and providing for residents to assist in the development of the application, as appropriate.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any duly elected resident organization representing the residents of the HA involved; and provide adequate opportunity for comment by the residents of the development and their

representative organizations prior to making the application final.

(c) Provide to any duly elected resident organization representing the development a summary of the resident comments and its response to them, and notify residents of the development(s) that this summary and response are available for reading in the management office.

(d) After HUD approval of a grant, notify residents of the development, and any representative organizations of approval of the grant; notify the residents of the availability of the HUD approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

(2) *Training/Employment/Contracting of HA Residents.*

(a) For IHAs, see § 950.175 of the Indian Preference Rule.

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) requires that programs of direct financial assistance administered by HUD provide, to the greatest extent feasible, opportunities for job training and employment to lower income residents in connection with projects in their neighborhoods. For purposes of training and employment, the recipient, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the following priority:

(i) Residents of the housing development or developments for which the section 3 assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents); and (iv) other section 3 residents. Therefore, at a minimum each HA and each of its contractors and subcontractors receiving funds under this program shall, to the greatest extent feasible, employ HA residents to provide services.

(c) For purposes of the requirements under section 3, to the greatest extent feasible means that the HA shall:

(i) Attempt to recruit HA residents to serve as service coordinators, trainers, counselors, etc. from the appropriate areas through local advertising media, signs placed at the targeted areas, and community organizations and public or private institutions operating within the development area. The HA shall include in its outreach and marketing efforts, procedures to attract the least likely to apply for this program, *i.e.*, low-income households headed by women, the elderly and persons with disabilities; and

(ii) Determine the qualifications of HA residents when they apply, either on their own or on referral from any source, and employ HA residents if their qualifications are satisfactory and there are openings. If the HA is unable to employ residents determined to be qualified, those residents shall be listed for the first available openings.

(3) *Resident Compensation.* Residents employed to provide services funded under this program or described in the application shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

(d) For IHAs, see 24 CFR 950.172 (which pertains to the Davis-Bacon Act).

(4) *Treatment of Income.* Annual Income does not include the earnings and benefits to any resident resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.), or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply:

(a) Comparable Federal, State or local law means a program providing employment training and supportive services that—

(i) Is authorized by a Federal, State or local law;

(ii) Is funded by the Federal, State or local government;

(iii) Is operated or administered by a public agency;

(iv) Has as its objective to assist participants in acquiring employment skills.

(b) Exclusion period means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). If the resident is terminated from employment without good cause, the exclusion shall end.

(c) Earnings and Benefits means the incremental earnings and benefits resulting from a qualifying employment program or subsequent job.

(5) *Audit Findings and Equal Opportunity Requirements.* To be eligible under this NOFA, a HA cannot have unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings relating to discriminatory housing practices that are unresolved. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws or the HA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, or the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved tenant selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [PHAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [PHAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

(6) *Additional Requirements.* In addition, grantees must comply with following requirements:

(a) Ineligible contractors. The provisions of 24 CFR part 24 relating to

the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(b) Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–87, A–122 and A–133 with respect to the acceptance and use of assistance by private non-profit organizations.

(7) *Reports.* Each HA receiving a grant shall submit to HUD a semi-annual progress report in a format prescribed by HUD measuring performance and documenting progress in achieving quantifiable program goals (participant evaluation and assessment data and other information, as needed) to determine the effectiveness of the EDSS Program in achieving goals of economic development, self-sufficiency, independent living and the prevention of premature or unnecessary institutionalization.

G. Ranking Factors

Each application for a grant award that is submitted in a timely manner, as specified in the application kit, to the local HUD Field Office and that otherwise meets the requirements of this NOFA, will be evaluated. For Public Housing Authority applications received under this program, Ranking Factor C, HA Capability, will be reviewed and scored by the Field Office Secretary's Representative. For Indian Housing Authorities (IHAs) applications received under this program, Ranking Factor C, HA Capability, will be reviewed and scored by the Area ONAP Administrator. Applications for Economic Development and Supportive Services must receive a minimum of 75 points out of a maximum 100 to be eligible for funding. Applications for Supportive Services to assist the elderly and/or persons with disabilities must receive a minimum of 75 points out of a maximum 100 to be eligible for funding. A HA should submit its application to the appropriate local HUD Public Housing Office/Office of Native American Programs (See Appendix to this NOFA). The local Field Office will transfer all eligible applications to a review site for processing by a Grants Management Team. HUD will review and evaluate the application as follows, according to whether the application seeks funds for combination Economic Development and Supportive Services or for Supportive Services to assist the elderly and/or persons with disabilities. Grants will be awarded to the four highest ranked IHA applications nationwide. *All* PHA and the remaining IHA applications will be placed in an overall nationwide ranking order and funded until all funds are exhausted.

Applications for Economic Development and Supportive Services activities funds will be scored on the following factors:

(1) Economic Development and Supportive Services

(a) *Evidence of Need and Proposal to Address the Need [20 Points].* HUD will award up to 20 points based on evidence of need for the supportive services by eligible residents and how the HA, and its partner agency, will meet the need, and maximize opportunities for self-sufficiency.

(i) A high score (14–20 points) is achieved where the applicant provides a detailed assessment of eligible residents, clearly identifies specific target areas of concern, and documents results to be derived from resident participation in EDSS services.

(ii) A medium score (7–13 points) is achieved where the applicant provides a general assessment of eligible residents and identifies target areas, but does not provide results to be derived from resident participation in EDSS services.

(iii) A low score (1–6 points) is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) *Program Quality [30 Points].* HUD will award up to 30 points based on the extent to which a HA:

- Provides evidence of a firm commitment from its partner agency ensuring that funding or services identified will be provided for three years following the receipt of funding under this program, and that the services are well designed to support the residents' self-sufficiency efforts. (Even if continued funding from this source is no longer available). [For applicants proposing to develop credit unions the HA, and its partner, shall evidence how the community financial institutions(s) will partner with the HA in establishing and supporting the HA credit union(s) (i.e., written commitments from banks to deposit funds in the credit union(s), support of Community Reinvestment Act)].
- Describes how eligible residents will be recruited for a training program.
- Describes the training and placement activities and the implementation schedule.
- Describes the extent to which the training activities will prepare eligible residents for employment or entrepreneurial opportunities.
- Describes the efforts to provide job development and job placement for successful program participants (specifying the number of jobs that will be created).
- Describes efforts to provide business development, business start-up and business operation for successful program participants.
- If applicable, describes the strategy for establishing a micro-loan fund for business start-up funds as part of a comprehensive training program.
- If applicable, describes the strategy for establishing a credit union as part of a comprehensive training program.
- Describes how program milestones and success will be measured (milestones shall include the number of participants to be served, types of services, and dollar amounts to be allocated over the three-year period.
- Proposes innovative and effective program strategies, and provides reasonably achievable goals and milestones for measuring performance under the program over the three-year period.

(i) A high score (19–30) is received where the applicant:

- Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for the entire three-year grant period.
- Designs a training program that:
- Outlines an innovative method for recruiting and sustaining eligible resident participation.
- Outlines the training and placement schedule and how the activities will prepare eligible residents for employment or entrepreneurial opportunities.
- Details efforts to provide job development and job placement for successful program participants (specifying the number and types of jobs that will be created).
- Details efforts to provide business development, business start-up and business operation for successful program participants (if applicable).
- Outlines the strategy for establishing a micro-loan fund for business start-up funds as part of a comprehensive training program (if applicable).
- Outlines the strategy for establishing a credit union as part of a comprehensive training program (if applicable).
- Proposes an innovative and effective program strategy, and provides achievable quantifiable goals and milestones for measuring performance and success under the program.

(ii) A medium score (8–18 points) is received where the HA:

• Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for less than the three-year grant period.
• Designs a training program that:
• Provides a general recruitment, training and placement schedule.
• Outlines a general method for recruiting, but does not build in assurances for sustaining resident participation.
• Provides a general training and placement schedule and how the activities will prepare eligible residents for employment or entrepreneurial opportunities.
• Details efforts to provide job development and job placement for successful program participants, but does not commit to specific numbers and types of jobs that will be created.
• Provides a general description of efforts to provide business development, business start-up and business operation for successful program participants (if applicable).
• Outlines a general strategy for establishing a micro-loan fund for business start-up funds as part of a comprehensive training program (if applicable).
• Outlines a general strategy for establishing a credit union as part of a comprehensive training program (if applicable).
• Proposes a reasonable program, and provides achievable quantifiable goals and milestones for measuring performance and success under the program.

(iii) A low score (1–7) is received where the applicant:

• Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for up to one year. Does not:
• Outline the method for recruiting eligible residents, and the training and placement schedule.
• Provide a training and placement schedule and how the activities will prepare eligible residents for employment or entrepreneurial opportunities.
• Detail efforts to provide job development and job placement for successful program participants. Does not specify numbers and types of jobs that will be created.
• Provide a description of efforts to provide business development, business start-up and business operation for successful program participants (if applicable).
• Outline a strategy for establishing a micro-loan fund for business start-up funds as part of a comprehensive training program (if applicable).
• Outline a strategy for establishing a credit union as part of a comprehensive training program (if applicable).
• Propose a reasonable strategy or achievable quantifiable goals or milestones for measuring performance and success under the program.

(c) *HA Capability [25 Points].* HUD will award up to 25 points based on the extent and evidence of success the HA, and its partner agency, have had in carrying out other comparable initiatives, and the extent of the involvement of the agency in the development of the application and its commitment of assistance. The commitment of the partner agency may be demonstrated through evidence of intent to provide direct financial assistance or other resources (i.e., in-kind services, training resources, counseling, etc.).

(i) A high score (17–25 points) is received where the applicant and its partner agency demonstrate success in providing similar economic development and supportive services initiatives and have clearly detailed how the initiatives were coordinated and complemented with other programs; and in addition to the MOA/MOU, provide evidence of a strong and committed partnership that clearly identifies the partner agency's commitment of funding or services over three years to the program.

(ii) A medium score (8–16 points) is received where the applicant and its partner agency do not currently provide similar initiatives to those proposed under this application, but clearly demonstrate how the initiatives proposed will be coordinated and complemented with other programs; and in addition to the MOA/MOU, provide evidence of the partner agency's intent to commit funding or services for less than three years to the program.

(iii) A low score (1–7 points) is received where it is unclear if the applicant, and its partner agency, have any experience in providing similar initiatives, and the applicant does not demonstrate how the proposed initiatives will be complemented with other programs; does not provide a MOA/MOU, but states that the partner agency will commit funding or services for up to one year.

(d) *Resident Involvement [20 Points].* The extent to which the HA demonstrates that it has partnered with residents in the planning phase for the EDSS program and will further include residents in the implementation phase. In addition, the HA shall evidence the extent to which it will contract with or employ residents to provide services. (Evidence of partnerships and commitments shall be in the form of a resolution or letter.)

(i) A high score (14–20 points) is received where the applicant:

• Describes support by the residents and provides documentation that shows strong support and involvement of the residents in the planning phases of application development; that the HA has sought resident input in identifying resident needs; and will continue their involvement throughout the implementation stages of the program; and
• Provides a letter or resolution documenting its strong commitment to employ residents to provide services, and a narrative describing the specific types of jobs that residents will be employed to provide.

(ii) A medium score (7–13 points) is received where the applicant:

• Provides documentation that residents are in support of the program, and a narrative that does not show their involvement in the application development, but ensures that the residents' role will be increased during the implementation stages of the program; and
• Provides a letter or resolution of commitment to employ residents to provide services, but does not include a narrative describing the specific types of jobs in which residents will be employed.

(iii) A low score (1–6 points) is received where the applicant:

• Provides a narrative statement that residents are in support of the program, but does not document resident support or how the residents will be involved in the planning or implementation stages of the program; and
• Provides a narrative that it will hire residents, but does not provide a letter or resolution or commitment nor describe the specific types of jobs in which residents will be employed.

(e) *Efficient Use of the Grant: Cost Effectiveness of the Grant [5 points].* HUD will award up to 5 points based on the extent to which the proposed program will result in the lowest total cost per unit in comparison to other applications received under EDSS. HUD is looking for a lower cost per unit rather than a higher cost. Once applications are received the Department will place the proposed amounts in a single list and utilize a threshold range scale to determine the score assignments.

(2) Supportive Services to Assist the Elderly and/or Persons With Disabilities

(a) *Evidence of Need and Proposal to Address the Need [20 Points].* HUD will award up to 20 points based on the

evidence of need for the supportive services by eligible residents and how the HA, and its partner agency, will meet the need, and maximize opportunities for independent living.

(i) A high score (14–20 points) is achieved where the applicant provides a detailed assessment of eligible residents, clearly identifies specific target areas of concern, and documents results to be derived from resident participation in EDSS services.

(ii) A medium score (7–13 points) is achieved where the applicant provides a general assessment of eligible residents and identifies target areas, but does not provide results to be derived from resident participation in EDSS services.

(iii) A low score (1–6 points) is achieved where the applicant merely mentions there is a need for services, but does not clearly address specific areas of concern.

(b) *Program Quality [30 Points].* HUD will award up to 30 points based on evidence of firm commitments from the HA and its partner agency that funding or services will be provided for three years following the receipt of funding under this program, and the strategy for meeting the eligible residents' needs (even if continued funding from this source is no longer available). In addition, the HA shall provide reasonably quantifiable achievable goals and milestones for measuring performance under the program over the three-year period (milestones shall include the number of participants to be served, types of services, and dollar amounts to be allocated over the three-year period).

(i) A high score (19–30 points) is received where the applicant:

- Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for the entire three-year grant period;
- Provides letters from other participating service providers outlining a commitment to provide services and other resources (i.e., direct financial, staff, training, etc.) over the grant period;
- Provides a detailed and precise description of the location of targeted area, and the coordination and accessibility of additional services and resources; and
- Proposes an innovative and effective program strategy, and provides reasonably achievable quantifiable goals and milestones for measuring performance and success under the program over the three-year period.

(ii) A medium score (8–18 points) is received where the applicant:

- Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for less than the three year grant period.
- Provides a letter of support rather than a MOA/MOU from its partner agency regarding a limited commitment to provide services and/or other resources; and
- Provides a description of the location of the targeted area, but the coordination and accessibility of available services and other resources is limited or somewhat unclear;
- Proposes a reasonable program, and provides achievable quantifiable goals and milestones for measuring performance and success under the program.

(iii) A low score (1–7 points) is received where the applicant:

- Documents through a MOA/MOU with its partner agency a firm commitment from the partner agency to provide funding or services for up to one year.
- Merely mentions that its partner agency will commit services and/or other resources to the program, but does not provide a MOA/MOU or letters indicating a commitment;
- Mentions the location of the targeted area, but does not provide details regarding the coordination and accessibility of additional services and resources; and
- Proposes a reasonable strategy, but the achievable quantifiable goals or milestones for measuring performance are unclear.

(c) *HA Capability [25 Points].* HUD will award up to 25 points based on the extent and evidence of success the HA, and its partner agency, have had in carrying out other comparable initiatives, and the extent of the involvement of the agency in the development of the application and its commitment of assistance. The commitment of the partner agency shall be demonstrated through evidence of intent to provide direct financial assistance or services.

(i) A high score (17–25) points) is received where the applicant and its partner agency demonstrate success in providing similar economic development and supportive services initiatives and have clearly detailed how the initiatives were coordinated and complemented with other programs; and in addition to the MOA/MOU, provide evidence of a strong and committed partnership that clearly identifies the partner agency's commitment of funding or services over three years to the program.

(ii) A medium score (8–16 points) is received where the applicant, and its partner agency do not currently provide similar initiatives to those proposed under this application, but clearly demonstrate how the initiatives proposed will be coordinated and complemented with other programs; and in addition to the MOA/MOU, provide evidence of the partner agency's intent to commit funding or services for less than three years to the program.

(iii) A low score (1–7 points) is received where it is unclear if the applicant, and its partner agency, have any experience in providing similar initiatives, and the applicant does not demonstrate how the proposed initiatives will be complemented with other programs; does not provide a MOA/MOU, but states that the partner agency will commit funding or services for up to one year.

(d) *Resident Involvement [20 Points].* The extent to which the HA demonstrates that it has partnered with residents in the planning phase for the EDSS program and will further include residents in the implementation phase. In addition, the HA shall evidence the extent to which it will contract with or employ residents to provide services. (Evidence of partnerships and commitments shall be in the form of a resolution or letter.)

(i) A high score (14–20 points) is received where the applicant:

- Describes support by the residents and provides documentation that shows strong support and involvement of the residents in the planning phases of application development; that the HA has sought resident input in identifying resident needs; and will continue their involvement throughout the implementation stages of the program; and
- Provides a letter or resolution documenting its strong commitment to employ residents to provide services, and a narrative describing the specific types of jobs that residents will be employed to provide.

(ii) A medium score (7–13 points) is received where the applicant:

- Provides documentation that residents are in support of the program, and a narrative that does not show their involvement in the application development, but ensures that the residents' role will be increased during the implementation stages of the program; and
- Provides a letter or resolution of commitment to employ residents to provide services, but does not include a narrative describing the specific types of jobs in which residents will be employed.

(iii) A low score (1–6 points) is received where the applicant:

- Provides a narrative statement that residents are in support of the program, but does not document resident support or how the residents will be involved in the planning or implementation stages of the program; and
- Provides a narrative that it will hire residents to employ residents, but does not provide a letter or resolution or commitment nor describe the specific types of jobs in which residents will be employed.

(e) *Efficient Use of the Grant: Cost Effectiveness of the Grant [5 points].* HUD will award up to 5 points based on the extent to which the proposed program will result in the lowest total cost per unit in comparison to other applications received under EDSS. HUD is looking for a lower cost per unit rather than a higher cost. Once applications are received the Department will place the proposed amounts in a single list and utilize a threshold range scale to determine the score assignments.

II. Application Submission Process

A. Application Kit

An application kit is required as the formal submission to apply for funding. The kit includes information and guidance on preparation of a Plan and Budget for activities proposed by the applicant. This process facilitates the execution of the grant for those selected to receive funding. An application may be obtained from the local HUD State/Area Offices with delegated responsibilities over an applying HA (See Appendix for listing), or by calling HUD's Resident Initiatives Clearinghouse toll-free number 1–800–955–2232. Requests for application kits must include your name, mailing address or P.O. Box number (including zip code), and should refer to document (FR–4021–N–01). Applications may be requested beginning [to be specified].

B. Application Submissions

The original and three copies of the application must be submitted. The Appendix lists addresses of HUD State/Area Offices that will accept the completed application.

The application must be physically received by 3:00 pm, local time, on October 15, 1996. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought on by unanticipated delays or other delivery-related problems. Facsimile and telegraphic applications are not authorized and shall not be considered.

III. Checklist of Application Submission Requirements

The Application Kit will contain a checklist of application submission requirements to complete the application process.

A. Applications for Economic Development and Supportive Services Activities Must Contain the Following Information

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A budget, timetable and list of milestones proposed for the three-year period. Milestones shall include the number of participants to be served, types of services, and dollar amounts to be allocated over the three-year period;

(4) A description of how the proposed training activities will prepare eligible residents for employment or entrepreneurial opportunities (including innovative strategies);

(5) A description of how training program participants' supportive services needs will be met (including innovative strategies);

(6) A description of how program goals and milestones will be measured, and the baseline indicators against which performance and success will be measured;

(7) A description of efforts to provide business development, business start-up and business operation for successful program participants;

(8) A description of the resident involvement in the planning and implementation phases of the program;

(9) A description of the services that HA residents will be employed to provide;

(10) Evidence of a firm commitment from its partner agency ensuring that the funding or services identified will be provided for three years, and that the services proposed are well designed to support the residents' self-sufficiency efforts;

(11) A description of the efforts to provide job placement for successful program participants, specifying the number of jobs that will be created;

(12) A description of how eligible residents will be recruited for training programs; and

(13) A description of the strategy for establishing a micro-loan fund for business start-up funds as part of a comprehensive training program (if applicable).

B. Applications for Supportive Services to Assist the Elderly and/or Persons With Disabilities Must Contain the Following Information

(1) Name and address (or P.O. Box) of the HA. Name and telephone number of contact person (in the event further information or clarification is needed during the application process);

(2) SF–424A, Budget Information, Non-Construction Programs, and SF–424B, Assurances, Non-Construction Programs;

(3) A budget, timetable and list of milestones proposed for the three-year period. Milestones shall include the number of participants to be served, types of services, and dollar amounts to be allocated over the three-year period;

(4) A description of the need for supportive services by eligible residents, and how the HA, and its partner, will meet the need (including innovative strategies);

(5) A description of the resident involvement in the planning and implementation phases of the program;

(6) A description of the services that HA residents will be employed to provide; and

(7) Evidence of a firm commitment from one or more partners ensuring that funding or services will be provided for three years, and that the services proposed are well designed to support independent living and/or to prevent premature or unnecessary institutionalization.

(8) A description of how program goals and milestones will be measured, and the baseline indicators against which performance and success will be measured.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete, consistent, and contains correct computations. If an application lacks certain technical items, such as certifications or assurances, or contains a technical error, such as an incorrect signatory, HUD will notify the applicant that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing

material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to nonsubstantive deficiencies or errors. Deficiencies capable of cure will involve only items not necessary for HUD to assess the merits of an application against the ranking factors specified in this NOFA. Curable items shall include missing signatures on required Certification Assurances (i.e., Drug-Free Workplace, Non-Construction Programs, Forms SF–424, 2880, etc.). Deficiencies incapable of cure will render an application ineligible, and the application will be removed from the review and scoring process.

V. Other Matters

A. Other Federal Requirements. In addition to the requirements already set forth in this NOFA, grantees must comply with the following requirements:

(1) *Ineligible contractors.* The provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87, A–122 and A–133 with respect to the acceptance and use of assistance by private non-profit organizations.

B. Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

C. Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice announces the availability of funds to HAs to provide economic development opportunities and supportive services to assist residents of public and Indian housing and other low-income families and individuals to become economically self-sufficient, and, thus could benefit families significantly.

D. Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *The Family*, has determined that this notice has potential for significant impact on family formation, maintenance, and general well-being. The purpose of this notice is to provide economic development opportunities and supportive services to assist residents of public and Indian housing and other low-income families and individuals to become economically self-sufficient. However, because the impact on families is beneficial, no further review is considered necessary.

E. Section 102 HUD Reform Act: Documentation and Public Access Requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its Federal Register notice of all recipients of assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1996, for further information on these requirements.)

F. Section 103 of the HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Dated: August 8, 1996.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

Appendix—Names, Addresses and Telephone Numbers of the Local HUD Offices and Offices of Native American Programs Accepting Applications for the Economic Development and Supportive Services Grant Program

New England

Connecticut State Office

Attention: Director, Office of Public Housing, First Floor, 330 Main Street, Hartford, CT 06106–1860, Telephone No. (203) 240–4523

Massachusetts State Office

Attention: Director, Office of Public Housing, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5634

New Hampshire State Office

Attention: Director, Office of Public Housing, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101–2487, Telephone No. (603) 666–7681

Rhode Island State Office

Attention: Director, Office of Public Housing, Sixth Floor, 10 Weybosset Street, Providence, RI 02903–3234, Telephone No. (401) 528–5351

New York/New Jersey

New Jersey State Office

Attention: Director, Office of Public Housing, One Newark Center, Thirteenth Floor, Newark, NJ 07102–5260, Telephone No. (202) 622–7900

New York State Office

Attention: Director, Office of Public Housing, 26 Federal Plaza New York, NY 10278–0068, Telephone No. (212) 264–6500

Buffalo Area Office

Attention: Director, Office of Public Housing, Lafayette Court 465 Main Street, Buffalo, NY 14203–1780, Telephone No. (716) 846–5755

Mid-Atlantic

District of Columbia Office

Attention: Director, Office of Public Housing, 820 First Street, NE, Washington, DC 20002–4205, Telephone No. (202) 275–9200

Maryland State Office

Attention: Director, Office of Public Housing, City Crescent Building 5th Floor, 10 South Howard Street, Baltimore, MD 21201–2505, Telephone No. (410) 962–2520

Pennsylvania State Office

Attention: Director, Office of Public Housing, 100 Penn Square East, The Wanamaker Building, 105 South Seventh Street, Philadelphia, PA 19107–3380, Telephone No. (215) 597–2560

Virginia State Office

Attention: Director, Office of Public Housing, The 3600 Centre 3600 West Broad Street, P.O. Box 90331, Richmond, VA 23230–0331, Telephone No. (804) 278–4507

West Virginia State Office

Attention: Director, Office of Public Housing, 405 Capitol Street, Charleston, WV 25301–1795, Telephone No. (304) 347–7000

Pittsburgh Area Office

Attention: Director, Office of Public Housing, 412 Old Post Office Courthouse, 7th Avenue and Grant Street, Pittsburgh, PA 15219–1906, Telephone No. (412) 644–6428

Southeast/Caribbean

Alabama State Office

Attention: Director, Office of Public Housing, Beacon Ridge Tower, Suite 300, 600 Beacon Parkway, West, Birmingham, AL 35209–3144, Telephone No. (205) 290–7617

Caribbean Office

Attention: Director, Office of Public Housing, New San Juan Office Building, 159 Carlos Chardon Avenue, San Juan, PR 00918–1804, Telephone No. (809) 766–6121

Georgia State Office

Attention: Director, Office of Public Housing, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303–3388, Telephone No. (404) 331–5136

Kentucky State Office

Attention: Director, Office of Public Housing, 601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, Telephone No. (502) 582–5251

Mississippi State Office

Attention: Director, Office of Public Housing, Doctor A.H. McCoy Federal Building, Suite 910, 100 West Capitol Street, Jackson, MS 39269–1016, Telephone No. (601) 965–5308

North Carolina State Office

Attention: Director, Office of Public Housing, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, Telephone No. (910) 547–4001

South Carolina State Office

Attention: Director, Office of Public Housing, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, SC 29201–2480, Telephone No. (803) 765–5592

Tennessee State Office

Attention: Director, Office of Public Housing, 251 Cumberland Bend Drive Suite 200, Nashville, TN 37228–1803, Telephone No. (615) 736–5213

Jacksonville Area Office

Attention: Director, Office of Public Housing, Southern Bell Tower Suite 2200, 301 West Bay Street, Jacksonville, FL 32202–5121, Telephone No. (904) 232–2626

Knoxville Area Office

Attention: Director, Office of Public Housing, John J. Duncan Federal Building, Third Floor, 710 Locust Street, Knoxville, TN 37902–2526, Telephone No. (615) 545–4384

Midwest

Illinois State Office

Attention: Director, Office of Public Housing, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Telephone No. (312) 353–5680

Indiana State Office

Attention: Director, Office of Public Housing, 151 North Delaware Street, Indianapolis, IN 46204–2526, Telephone No. (317) 226–6303

Michigan State Office

Attention: Director, Office of Public Housing, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, Telephone No. (313) 226–7900

Minnesota State Office

Attention: Director, Office of Public Housing, 220 Second Street, South Minneapolis, MN 55401–2195, Telephone No. (612) 370–3000

Ohio State Office

Attention: Director, Office of Public Housing, 200 North High Street, Columbus, OH 43215–2499, Telephone No. (614) 469–5737

Wisconsin State Office

Attention: Director, Office of Public Housing, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2289, Telephone No. (414) 297–3214

Cincinnati Area Office

Attention: Director, Office of Public Housing, Room 9002, Federal Office Building, 550 main Street, Cincinnati, OH 45202–3253, Telephone No. (513) 684–2884

Cleveland Area Office

Attention: Director, Office of Public Housing, Renaissance Building Fifth Floor, 1350 Euclid Avenue, Cleveland, OH 44115–1815, Telephone No. (216) 522–4058

Grand Rapids Area Office

Attention: Director, Office of Public Housing, Trade Center Building, 50 Louis, N.W., Grand Rapids, MI 49503–2648, Telephone No. (616) 456–2127

Southeast

Arkansas State Office

Attention: Director, Office of Public Housing, TCBY Tower, 425 West Capitol Avenue, Little Rock, AR 72201–3488, Telephone No. (501) 324–5931

Louisiana State Office

Attention: Director, Office of Public Housing, Fisk Federal Building, 1661 Canal Street, New Orleans, LA 70112–2887, Telephone No. (504) 589–7200

Oklahoma State Office

Attention: Director, Office of Public Housing, 500 West Main Street, Oklahoma City, OK 73102, Telephone No. (405) 553–7559

Texas State Office

Attention: Director, Office of Public Housing, 1600 Throckmorton, Post Office Box 2905, Fort Worth, TX 76113–2905, Telephone No. (817) 885–5401

Houston Area Office

Attention: Director, Office of Public Housing, Norfolk Tower, Suite 200, 2211 Norfolk, Houston, TX 77098–4096, Telephone No. (713) 834–3274

San Antonio Area Office

Attention: Director, Office of Public Housing, Washington Square, 800 Dolorosa, San Antonio, TX 78207–4563, Telephone No. (210) 229–6800

Great Plains

Iowa State Office

Attention: Director, Office of Public Housing, Federal Building, Room 239, 210 Walnut Street, Des Moines, IA 50309–2155, Telephone No. (515) 284–4512

Kansas/Missouri State Office

Attention: Director, Office of Public Housing, Gateway Tower II, Room 200, 400 State Avenue, Kansas City, KS 66101–2406, Telephone No. (913) 551–5462

Nebraska State Office

Attention: Director, Office of Public Housing, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955, Telephone No. (402) 492–3100

St. Louis Area Office

Attention: Director, Office of Public Housing, Robert A. Young Federal Building, Third Floor, 1222 Spruce Street, St. Louis, MO 63103–2836, Telephone No. (314) 539–6583

Rocky Mountains

Colorado State Office

Attention: Director, Office of Public Housing, 633–17th Street, Denver, CO 80202–3607, Telephone No. (303) 672–5440

Pacific/Hawaii

Arizona State Office

Attention: Director, Office of Public Housing, 2 Arizona Center, Suite 1600, 400 North Fifth Street, Phoenix, AZ 85004–2361, Telephone No. (602) 379–4434

California State Office

Attention: Director, Office of Public Housing, Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, Telephone No. (415) 556–4752

Hawaii State Office

Attention: Director, Office of Public Housing, Seven Waterfront Plaza, Suite 500, 500 Ala

Moana Boulevard, Honolulu, HI 96813–4918, Telephone No. (808) 522–8175

Los Angeles Area Office

Attention: Director, Office of Public Housing, 1615 W. Olympic Boulevard, Los Angeles, CA 90015–3801, Telephone No. (213) 251–7122

Sacramento Area Office

Attention: Director, Office of Public Housing, 777 12th Street, Suite 200, Sacramento, CA 95814–1997, Telephone No. (916) 551–1351

Northwest/Alaska

Alaska State Office

Attention: Director, Office of Public Housing, University Plaza Building, Suite 401, 949 East 36th Avenue, Anchorage, AK 99508–4399, Telephone No. (907) 271–4170

Oregon State Office

Attention: Director, Office of Public Housing, 520 Southwest Sixth Avenue, Portland, OR 97204–1596, Telephone No. (503) 326–2561

Washington State Office

Attention: Director, Office of Public Housing, Seattle Federal Office Building, Suite 200, 909 1st Avenue, Seattle, WA 98104–1000, Telephone No. (206) 220–5101

Office of Native American Program Offices

Serves East of the River (including all of Minnesota)

Eastern Woodlands Office of Native American Programs

Attention: Administrator, Office of Native American Programs, Mecalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, Telephone No. (312) 353–1282 or 800–735–3239

Serves: Louisiana, Missouri, Kansas, Oklahoma and Eastern Texas

Southern Plains Office of Native American Programs

Attention: Administrator, Office of Native American Programs, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, Telephone No. (405) 553–7525

Serves: Colorado, Montana, The Dakotas, Nebraska, and Wyoming

Northern Plains Office of Native American Programs

Attention: Administrator, Office of Native American Programs, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, Telephone No. (303) 672–5462

Serves: California, Nevada, Arizona and New Mexico

Southwest Office of Native American Programs

Attention: Administrator, Office of Native American Programs, Two Arizona Center, Suite 1650, 400 North Fifth Street, Suite 1650, Phoenix, AZ 85004–2361, Telephone No. (602) 379–4156

or

Albuquerque Division of Native American Programs

Albuquerque Plaza, 201 3rd Street, Suite 1830, Albuquerque, NM 87102–3368, Telephone No. (505) 766–1372

or

Office of Native American Programs, HUD

450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448

Serves: Iowa, Washington, Idaho and Oregon

Northwest Office of Native American Programs

Attention: Administrator, Office of Native American Programs, 909 1st Avenue, Suite 300, Seattle, WA 98104–1000, Telephone No. (206) 220–5270

Serves: Alaska

Alaska Office of Native American Programs

Attention: Administrator, Office of Native American Programs, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, AK 99508–4399, Telephone No. (907) 271–4633

[FR Doc. 96–20698 Filed 8–9–96; 12:50 pm]

BILLING CODE 4210–33–P

Federal Register

Wednesday
August 14, 1996

Part IV

Department of Education

Inviting Individuals To Serve as Field Readers for the Student Support Services Grant Application Competition and Applications for New Awards for Fiscal Year 1997; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.042]

Student Support Services Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: Provides grants to institutions of higher education for projects offering support services to low-income, first generation, or disabled college students. These support services should increase their retention and graduation rates, facilitate their transfer from two-year to four-year colleges, and foster an institutional climate supportive of the success of low-income and first generation college students and students with disabilities. The Student Support Services Program increases the number of disadvantaged students in the United States who successfully complete a program of study at the postsecondary level of education.

Eligible Applicants: Institutions of higher education and combinations of institutions of higher education.

Supplementary Information: Applicants must address the changes in the Student Support Services program included in the final regulations published in the Federal Register on July 24, 1996 (61 FR 38534). In general, the grantee selection criteria have been modified with particular emphasis on the sections relevant to Need, Plan of Operation, Evaluation and Prior Experience. The final regulations will be included in the application package made available by the Department.

Deadline for Transmittal of Applications: October 29, 1996.

Deadline for Intergovernmental Review: December 30, 1996.

Applications Available: August 28, 1996.

Available Funds: The Congress has not yet enacted a fiscal year 1997 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. The estimated amount of funds available for this program is based in part on the President's 1997 budget and in part on the level of funding available for fiscal year 1996.

Note: Currently funded Student Support Services grantees with five year awards expiring August 31, 1998 must submit an application during this competition to be considered for a new award under the fiscal year 1997 funding cycle. The project start date for new grants awarded to current five-year grantees who are successful applicants under this competition will be September 1, 1998.

Estimated Range of Awards: $170,000–300,000.

Estimated Average Size of Award: $215,000.

Estimated Number of Awards: 705–750.

Note: The Department is not bound by any of the estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85 and 86; and (b) the regulations for this program in 34 CFR Part 646, as published in the Federal Register on July 24, 1996 (61 FR 38534).

Technical Assistance Workshops: The Department of Education will conduct twelve technical assistance workshops to assist prospective applicants in developing proposals for the Student Support Services Program. The technical assistance workshops will be held as follows:

Saturday, September 7, 1996, 1:00 p.m.–4:00 p.m.

Grand Hyatt Hotel, 1000 H Street, N.W., Washington, DC, Julia Tower, (202) 347–7430

Tuesday, September 17, 1996, 9:00 a.m.–4:00 p.m.

University of Chicago, Ida Noyes Hall, 1212 E. 59th Street, Chicago, Illinois 60637, Terhonda Palacios, (312) 702–8288

Metropolitan State College, Tivoli Union, Turnhall Room 250, 900 Auraria Parkway, Denver, Colorado 80217, Gloria Ortega, (303) 556–3484

University of Hawaii/Manoa, Campus Center Ballroom, 1755A Pope Road, Honolulu, Hawaii 96822–2337, Melvin Yoshimoto, (808) 956–8402

Thursday, September 19, 1996, 9:00 a.m.–4:00 p.m.

University of North Carolina/Charlotte, Cone Center, Rm. 210, 9201 University City Boulevard, Charlotte, North Carolina 28223–0001, Marcia Willis, (704) 547–2851/2924

Caribbean University, Hostos Building/ 4th Floor Conf. Rm., Rt. 167 Kilom Forest Hills, Bayamon, Puerto Rico 00960, Lillian Matos-Freyes, (809) 780–0070 x423

Friday, September 20, 1996, 9:00 a.m.–4:00 p.m.

Seattle Central Community College, 3212 Lecture Hall, 1701 Broadway, Seattle, Washington 98122, Joan Ray, (206) 587–5466

University of San Francisco, 2130 Fulton Street, San Francisco, California 94117–1080, Janice Cook, (415) 666–6476

Tuesday, September 24, 1996, 9:00 a.m.–4:00 p.m.

University of Massachusetts, 100 Morrisey Boulevard, Boston, Massachusetts 02125, Charles Diggs, (617) 287–5870

Thursday, September 26, 1996, 9:00 a.m.–4:00 p.m.

Fordham University, TRIO Program, SMH 301, Bronx, New York 10458, Elliott Palais, (718) 817–4821

Friday, September 27, 1996, 9:00 a.m.–4:00 p.m.

University Center at Tulsa, Room 150, 700 N. Greenwood, Tulsa, OK 74106, Matthew Taylor, (214) 767–3811

Monday, September 30, 1996, 9:00 a.m.–4:00 p.m.

Saint Mary's University, University Center, Conference Room A, Camino Santa Maria Street, San Antonio, Texas 78228–8500, Jackie Dansby-Edwards, (210) 436–3206

For Applications or Further Information Contact: Virginia A. Mason, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600D, Washington, D.C. 20202–5249. Telephone: (202) 708–4804 or by Internet to TRIO@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov/); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Authority: 20 U.S.C. 1070a-11 and 1070a.

Dated: August 9, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–20750 Filed 8–13–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Notice Inviting Individuals To Serve as Field Readers for the Student Support Services Grant Application Competition

AGENCY: Department of Education.

SUMMARY: The Assistant Secretary for Postsecondary Education invites interested individuals to apply to serve as field readers evaluating grant applications submitted for funding for fiscal year (FY) 1997 for the Student Support Services Program.

DATES: An individual interested in serving as a field reader should submit his or her resume to the Division of Student Services no later than September 30, 1996 (see **FOR FURTHER INFORMATION CONTACT** section of this notice). Because of the many activities involved with scheduling the competition, a delay in the receipt of a resume may preclude an individual from being considered for service during FY 1997.

SUPPLEMENTARY INFORMATION: The Department will base selection on the resume provided by each potential field reader. Field readers will review applications according to the applicable published selection criteria. All reviews of applications will take place in Washington, D.C. Each field reader will serve for a period of approximately 5 to 10 days and receive compensation for certain travel expenses, a per diem allowance, and an honorarium. Because of the standards (e.g. conflict of interest) and needs of the Department, some applicants, although otherwise qualified, may not be selected to serve as field readers. However, they will be included in our data base for future consideration.

A potential field reader who is employed should include in his or her resume the name of the employer, the potential reader's current position with that employer, and the mailing address of the employer.

PROGRAM DESCRIPTIONS AND FIELD READER QUALIFICATIONS: The Student Support Services Program awards grants to institutions of higher education for projects that provide support services to low-income, first generation, or disabled college students to enhance their academic skills, increase their retention and college graduation rates, facilitate their transfer from two-year to four-year colleges, and foster an institutional climate supportive of the success of low-income, first generation college students and students with disabilities. Field readers are needed who have experience: (a) Counseling, mentoring, tutoring, or teaching, in programs for disadvantaged students at the postsecondary level; (b) planning and designing other educational support programs on college campuses; (c) designing, establishing, administering, or coordinating educational programs at the postsecondary level; and (d) administering, teaching or counseling in an educational program for disabled students at the postsecondary level.

FOR FURTHER INFORMATION CONTACT: Virginia A. Mason, Division of Student Services, U.S. Department of Education, 600 Independence Avenue, S.W., The Portals Building, Suite 600D, Washington, D.C. 20202–5249. Telephone: (202) 708-4804 or by internet to TRIO@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Authority: 20 U.S.C. 1070d, 1070d–1b

Dated: August 9, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 96–20751 Filed 8–13–96; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

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FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

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.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Raisins produced from grapes grown in California; published 7-15-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Goats from Mexico for immediate slaughter and horse quarantine facilities; published 7-15-96

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Wetlands reserve program:

Responsibility transferred from NCRS to Commodity Credit Corporation; published 8-14-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Energy efficiency standards; consideration procedures; published 7-15-96

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Performance of acts where last day falls on Saturday, Sunday, or legal holiday; time; published 8-14-96

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Carolina et al.; comments due by 8-19-96; published 7-18-96

Nectarines and peaches grown in California; comments due by 8-21-96; published 7-22-96

Oranges and grapefruit grown in Texas; comments due by 8-21-96; published 7-22-96

Oranges, grapefruit, tangerines, and tangelos grown in Florida; comments due by 8-23-96; published 7-24-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Hawaiian and territorial quarantine notices:

Papaya, carambola, and litchi; comments due by 8-22-96; published 7-23-96

Plant-related quarantine, domestic:

Mediterranean fruit fly; comments due by 8-19-96; published 6-19-96

AGRICULTURE DEPARTMENT

Food and Consumer Service

Child nutrition programs:

National school lunch, school breakfast, child and adult care food, and summer food service programs--

Meat alternates; comments due by 8-19-96; published 7-5-96

COMMERCE DEPARTMENT

International Trade Administration

Watches duty exemption program:

Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 8-21-96; published 7-22-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

International Code of Conduct for Responsible Fisheries implementation plan; availability; comments due by 8-23-96; published 7-25-96

DEFENSE DEPARTMENT

Army Department

Environmental analysis of army actions; comments due by 8-21-96; published 7-22-96

DEFENSE DEPARTMENT

Acquisition regulations:

U.S. European Command (EUCOM) supplement; comments due by 8-19-96; published 6-20-96

Federal Acquisition Regulation (FAR):

Commercial items contracts and subcontracts; cost accounting standards exemption; comments due by 8-20-96; published 6-21-96

Contracts, fixed-priced; performance incentives; comments due by 8-19-96; published 6-20-96

Costs related to legal/other proceedings; comments due by 8-19-96; published 6-20-96

Drug-free workplace; certification requirements; comments due by 8-19-96; published 6-20-96

Foreign selling costs; comments due by 8-19-96; published 6-20-96

Historically black colleges and universities/minority institutions; collection of award data; comments due by 8-19-96; published 6-20-96

Independent research and development/bid and proposal in cooperative arrangements; comments due by 8-19-96; published 6-20-96

Irrevocable letters of credit and alternatives to Miller Act bonds; comments due by 8-19-96; published 6-20-96

North American Free Trade Agreement Implementation Act; implementation; comments due by 8-19-96; published 6-20-96

Preaward debriefings; comments due by 8-23-96; published 6-24-96

ENERGY DEPARTMENT

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Management and operating contracts--

Contract reform initiative; implementation; comments due by 8-23-96; published 6-24-96

Contract reform initiative; implementation; comments due by 8-23-96; published 6-24-96

Performance-based management contracting, fines, penalties, etc.; comments due by 8-23-96; published 7-25-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Industrial Combustion Coordinated Rulemaking Advisory Committee--

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Air programs:

Stratospheric ozone protection--

Fire extinguishers containing hydrochloro-fluorocarbons (HCFCs); ban reconsideration; comments due by 8-19-96; published 7-18-96

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Tennessee; comments due by 8-19-96; published 7-18-96

Washington; comments due by 8-22-96; published 7-23-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Avermectin B1 and its delta-8,9-isomer; comments due by 8-23-96; published 7-24-96

N-acyl sarcosines and sodium n-acyl sarcosinates; comments due by 8-23-96; published 7-24-96

Polybutene; comments due by 8-23-96; published 7-24-96

Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate; comments due by 8-19-96; published 7-18-96

Solid wastes:

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Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 8-21-96; published 7-22-96

National priorities list update; comments due by 8-21-96; published 7-22-96

FEDERAL COMMUNICATIONS COMMISSION

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